

FILED

OCT 30 1914

JAMES D. MAHER
CLERK

No 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY, Chairman, JOHN McSWEEN,
ET AL., Constituting the State Dispensary Commis-
sion, et al.: No. 70, October Term, 1914, in Error to
the Supreme Court of the State of South Carolina.

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

STATE OF SOUTH CAROLINA, No. 85, October Term,
1914, in Error to the Supreme Court of the State of
South Carolina.

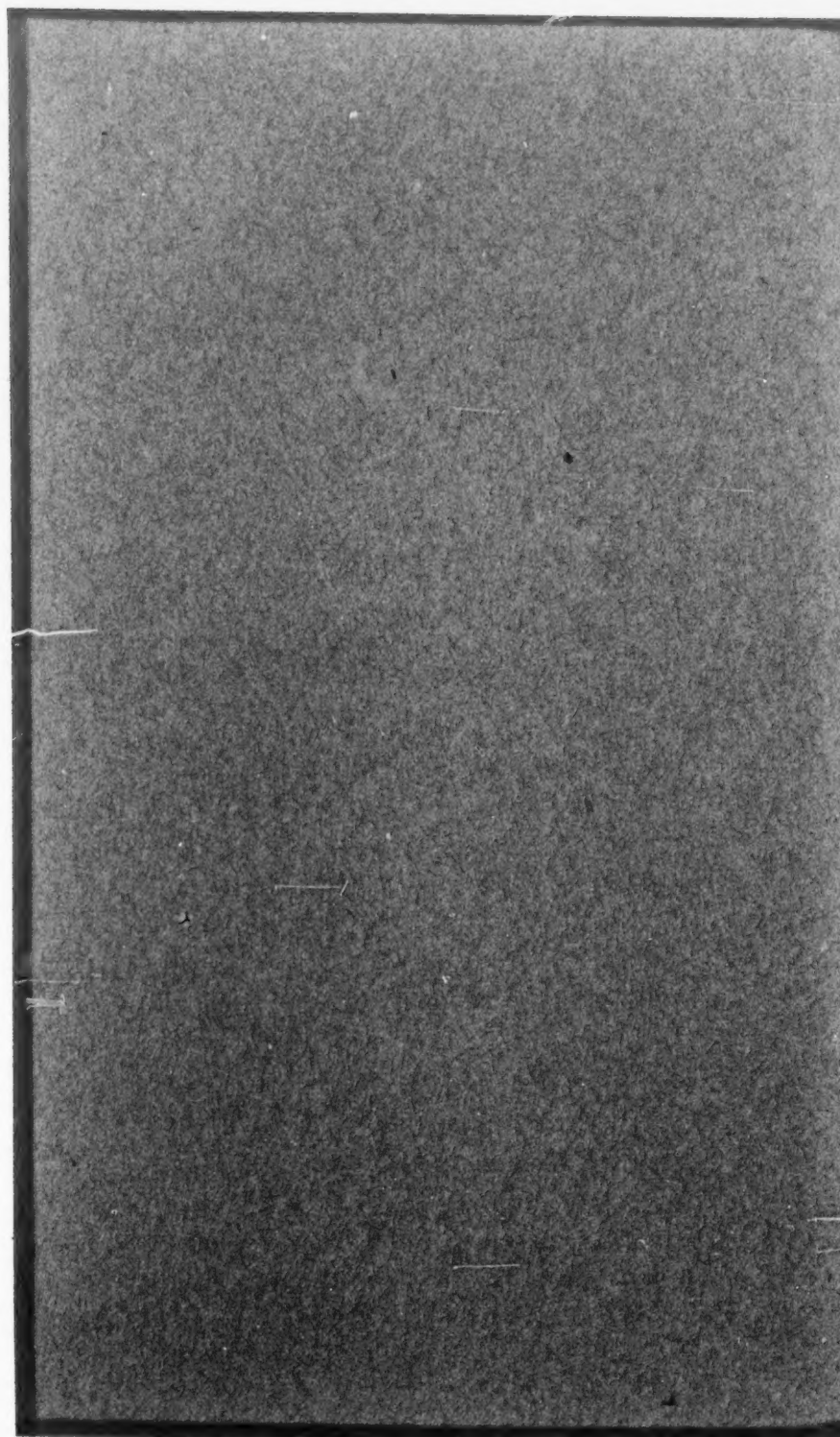
CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY ET AL., No. 569, October Term,
1914, in Error to the United States Circuit Court of
Appeals for the Fourth Circuit.

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY ET AL., No. 570, October Term,
1914, in Error to the District Court of the United
States for the Eastern District of South Carolina.

MOTION AND ORDER



ORDER

This was a motion to postpone the argument in Nos. 70, 85 and 569, above entitled, until No. 570 is reached and for permission to argue all of the four cases together when No. 570 is reached.

Plaintiff-in-Error having shown to the Court good reason why this should be done, and having filed stipulation between counsel to this effect, it is

ORDERED that the motion be, and the same is hereby, granted.

.....
Chief Justice.

November

1914.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
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WILLIAM J. MURRAY ET AL., No. 569, October Term,
1914, in Error to the United States Circuit Court of
Appeals for the Fourth Circuit

CAROLINA GLASS COMPANY, PLAINTIFF-IN-ERROR,
against

WILLIAM J. MURRAY ET AL., No. 570, October Term,
1914, in Error to the District Court of the United
States for the Eastern District of South Carolina.

MOTION.

Now comes the Carolina Glass Company, Plaintiff-in-Error in each of the above entitled causes, and by Wm. H. Lyles, its counsel of record, moves the Supreme Court to enter an order in said causes concerning the argument thereof, according to the stipulation of counsel hereto attached, that is, by postponing the argument of Nos. 70, 85 and 569 until No. 570 is reached, and then by allowing the argument of all four cases together, and presents to the Court the attached affidavits as reasons why this motion should be granted and such an order entered.

WM. H. LYLES,
Attorney for Plaintiff-in-Error
in each of the above cases.

STATE OF SOUTH CAROLINA, }
Richland County. }

Personally appears Wm. H. Lyles, who, on oath, says that he is an attorney at law duly admitted to practice in the State and Federal Courts in South Carolina and the Supreme Court of the United States.

That deponent has read the attached affidavit of Dr. McIntosh, his physician, and the same truly represents the deponent's physical condition and explains his inability to prepare or to argue four cases of the Carolina Glass Company in the Supreme Court of the United States at this time or in the near future.

That the four cases set forth in the title of this motion are all related, that is to say, the transactions giving rise to such cases were connected and grew out of each other, so that in order to understand the facts involved in each case, it is necessary to understand the facts involved in each of the cases preceding it, and the facts involved in all of the cases are so logically connected that they can all be stated together in logical form and the questions of law

presented as they arise. For this reason, it will be much more satisfactory to counsel in the causes, and deponent submits also to the Court itself, to argue all of the cases together, and will economize the time of the Court as well as of counsel.

That the causes involve the construction of six or more statutes of the State of South Carolina, the relevant portions of which will consume thirty or more pages of printing, and if the cases are argued separately, it will be necessary to consider these various statutes in each case, which deponent submits will be a needless expenditure of time and effort when this can be done once for all of the cases if they are argued together.

WM. H. LYLES.

Sworn to and subscribed before me this 28th day of October, 1914.

(Seal) JAS. B. MURPHY,
Notary Public for South Carolina.

STATE OF SOUTH CAROLINA, }
Richland County. } ss.

Personally appears James H. McIntosh, who, being duly sworn, says that he is a practicing physician of the City of Columbia and State of South Carolina, and has been practicing for a number of years; that he is the family physician of Mr. William H. Lyles, an attorney at law of the City of Columbia, and has been practicing upon Mr. Lyles personally for a number of years; that Mr. Lyles, during the past summer and fall, has been suffering from spells of acute indigestion which would result, when he had undergone considerable mental exertion, or had endured other fatigue, in spells of severe vertigo; that until recently the attacks have been much more frequent during the progress of the fall, and Mr. Lyles has been positively prohibited by me, as his physician, from undertaking any considerable mental strain, such as the writing

of arguments or the trial of causes; that the condition of his health is now considerably improved, with every prospect of a permanent cure, but he is still physically unable to undergo the labor of the preparation of an important argument and, in my opinion, it would be exceedingly dangerous for him to leave his home to attend Court elsewhere in the near future.

JAMES H. McINTOSH.

Sworn to before me this 27th day of October, 1914.

JOHN T. SEIBELS, (L. S.)

Notary Public for S. C.

STIPULATION.

It is stipulated between counsel that the argument of cases Nos. 70, 85 and 569, above stated, shall be postponed until No. 570 is reached, and that then all four of the cases shall be argued together. This stipulation, however, is subject to the right of defendant-in-error to make a motion to dismiss in each or all of the cases.

It is further stipulated that such portions only of the record in No. 569 as sent up from the Circuit Court of Appeals for the Fourth Circuit shall be printed as are not contained in the printed record of No. 570, which is already printed, that is, that in printing the record in No. 569, there shall be no duplication of the printed portions of the record already printed in No. 570.

WM. H. LYLES,
Counsel for Plaintiff-in-Error.

B. L. ABNEY,
Counsel for Defendants-in-Error.

October 26th, 1914.

FILED

JAN 9 1915

JAMES O. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1914

NO. 9 (NO. 391, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN ET AL., CONSTITUTING THE STATE DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

NO. 12 (NO. 408, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

NO. 100.

204

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MURRAY, JOHN McSWEEN, ADOLPHUS N. WOOD, AVERY PATTON AND JAMES S. BRICE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

NO. 101.

205

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MURRAY, JOHN McSWEEN, ADOLPHUS N. WOOD, AVERY PATTON AND JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

**WILLIAM H. LYLES, DAVID W. ROBINSON,
JO-BERRY S. LYLES,**

Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1914.

NO. 70 (NO. 391, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
WILLIAM J. MURRAY, CHAIRMAN, JOHN Mc-
SWEEN ET AL., CONSTITUTING THE STATE
DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

NO. 85 (NO. 408, OCTOBER TERM, 1913).

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

NO. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
WILLIAM J. MURRAY, JOHN MCSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FOURTH CIRCUIT.

NO. 570.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
WILLIAM J. MURRAY, JOHN MCSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM H. LYLES, DAVID W. ROBINSON,
JO-BERRY S. LYLES,
Counsel for Plaintiff in Error.

STATEMENT.

A motion was duly made and allowed in this Court whereby these four cases are to be argued together, and this brief is filed pursuant to such permission. It will be more logical to first take up No. 85 at the October Term, 1914, (408 October Term, 1913,) and to state this case and argue it first. It will then be proper to take up No. 70 at the October Term, 1914 (No. 391, October Term, 1913), and to state this case and argue it separately. It will then be proper to take up and argue together No. 569 and No. 570, and this course will be followed in the brief.

JURISDICTION.

Following the arguments of the cases, we present a discussion of the jurisdiction of this Court in each of the cases, and the relief we ask this Court to give to plaintiff in error.

No. 85.

OCTOBER TERM, 1914, (No. 408, OCTOBER TERM, 1913.)

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

STATEMENT OF THE CASE.

The Carolina Glass Company was duly incorporated under the laws of the State of South Carolina in 1902, and from the date of its incorporation until April, 1906, it furnished bottles and demijohns to the State Dispensary, in accordance with the provisions of the Act of 1900, the relevant portions of which are printed as Appendix A to this argument. In February, 1906, a Concurrent Resolution of

the South Carolina General Assembly cancelled the existing contracts of the State Dispensary with the Carolina Glass Company (see Appendix D), but the accounts due the Company for such commodities were duly settled and all transactions to April, 1906, were ended. From April, 1906, until the State Dispensary was abolished by the Act of 1907 (see Appendix E, Section 47), the Carolina Glass Company continued to furnish bottles and demijohns to the Dispensary, by virtue of successful bids, under the Act of 1900 and the Concurrent Resolution of 1906.

In 1905, a legislative committee was appointed by Concurrent Resolution to investigate the affairs of the State Dispensary. (See Appendix B.) The Resolution authorized the committee, among other things, to investigate all transactions connected with the Dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual contracting for the sale of goods to the State for the Dispensary, and to ascertain the financial standing of the business of the Dispensary.

The State Dispensary was abolished by the Act of 1907, Section 47 (see Appendix E), and, by another Act of 1907, a Commission, known as the State Dispensary Commission, was provided for, whose duty it was to close out the entire business and property of the State Dispensary, collect all debts due, and pay all just liabilities of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the Dispensary." It was also clothed with all the power and authority conferred upon the Dispensary Investigating Committee, which had been appointed and had acted under the Act of 1906. (See Appendix C.) This Act of 1907 was amended by the Act of 1908, so as to give the State Dispensary Commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." (See Appendix G.)

The claim of the Carolina Glass Company, plaintiff in error, was filed with such State Dispensary Commission on February 24, 1907, for the sum of twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75), the balance due to said Company by the State of South Carolina on account of glass bottles, demijohns, etc., sold and delivered to the Board of Directors of the State Dispensary under awards made by such Board of Directors in April, 1906, and subsequently. (Record, page 1.) The claim was filed under the Act of 1907, but the consideration thereof was continued under the Act of 1908, and judgment was rendered by the Commission on November 17th, 1909. (Record, pp. 1, 11-14.)

The Commission, by a vote of three to two, rendered its so-called judgment on November 17th, 1909, whereby it adjudged that the prices charged by the Carolina Glass Company during the period covered by the claim filed with the Commission, were "substantially in accord with the fair and reasonable market price of the goods sold during that period," and adjudged that the claim of the plaintiff in error for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) was a just liability of and a just claim against the State of South Carolina. The Commission, however, proceeded to find "That during the years preceding 1906 the overcharges made (by plaintiff in error) in excess of the fair and reasonable market price of the goods sold (to the State of South Carolina) was fifty-one thousand, four hundred thirty-two and 99-100 dollars (\$51,432.99), which should be, and is hereby, offset against the claim in favor of said Carolina Glass Company, to wit: its claim for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75), which being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of twenty-eight thousand, four hundred nineteen and 24-100 dollars (\$28,419.24).

"Whereupon judgment is rendered in accordance with the foregoing findings.

"W. J. MURRAY—No.

"JOHN McSWEEN—No.

"A. N. WOOD,

"AVERY PATTON,

"J. S. BRICE."

No pleading of any character was filed before the Commission specifying the offsets or counter-claims of the State, and not even any oral notice or specification of what was claimed by the State was given to plaintiff in error. At the conclusion of the testimony before the Commission, counsel for the State admitted that the claim of plaintiff in error was valid for the goods furnished since April, 1906. When some explanation was requested of the character of this claim, at even this late day, the record shows that no explanation was given, and it was not, either in theory or in fact, until the filing of the so-called judgment of the Commission that the claimant was advised of the character of the offset or counter-claim which was contended to exist in favor of the State. (R., pp. 4-11.)

MANNER IN WHICH ISSUES ARE RAISED.

On the appeal to the Supreme Court of South Carolina from such judgment of the Commission, the plaintiff in error, by its Exceptions 24, 25 and 26, presented concisely its contentions that the so-called overjudgment of the Commission was entirely void; first, because the statutes did not invest the Commission with jurisdiction to consider any such offset or counter-claim in favor of the State against plaintiff in error; and, second, because plaintiff in error had had no notice or opportunity to be heard upon such offset or counter-claim. (R., pp. 22-23.) The Supreme Court held that the authority to determine claims against the State included authority to fix and determine claims against the State included authority to fix and determine claims in favor of the State, in so far as this was

necessary to determine what were the just claims against the State. (R., pp. 25-26.) The Court, however, made no specific answer to plaintiff in error's contention that the overjudgment was invalid because there was no notice or opportunity to be heard given plaintiff on the alleged offset.

SPECIFICATION OF ERRORS RELIED UPON.

In this manner are raised the errors relied upon here, which are based upon the four assignments of error (R., pp. 32-34), and are specifically stated as follows:

SPECIFICATION FIRST.

That the Supreme Court of South Carolina should have held that the State Dispensary Commission was a Commission of limited jurisdiction, having no authority to pass upon so-called claims of the State of South Carolina against plaintiff in error, and that such Commission had no jurisdiction to offset the just and valid claim of plaintiff in error for the sum of \$23,013.75 by a supposed claim of the State against plaintiff in error on account of previous and other ended transactions between them, and that the overjudgment was void for this reason.

SPECIFICATION SECOND.

That the Supreme Court of South Carolina should have held that in the proceedings before said Commission, plaintiff in error, claimant there, had no notice by any pleading or proceeding of any character that the State of South Carolina or the said State Dispensary Commission would undertake to offset against a valid claim of plaintiff in error for goods regularly furnished since April, 1906, a supposed claim of the State of South Carolina on account of other previous, separate and distinct transactions between claimant and said State, which had been finally closed and ended, and that the judgment of offset by the Commission for this reason impaired the contract rights of plaintiff in error, deprived it of its property without due

process of law, and denied to it the equal protection of the laws and trial by jury, in violation of the Constitution of the United States.

SPECIFICATION THIRD.

That the Supreme Court of South Carolina should have held that the so-called overjudgment was null and void because the same was an effort to deprive plaintiff in error of its property without due process of law and to deny to it the equal protection of the laws and also to impair the contract rights of plaintiff in error, in violation of the Constitution of the United States.

AUTHORITIES CITED.

- State vs. Dispensary Commission*, 79 S. C., 316.
Murray vs. Wilson Distilling Co., 213 U. S., 151, 53 L. Ed., 742.
Den vs. Hoboken L. and I. Co., 59 U. S. (18 How.), 272, 15 L. Ed., 372.
Ekin vs. U. S., 142 U. S. 651, 35 L. Ed., 1147.
Kilbourn vs. Thomson, 103 U. S., (13 Otto), 168, 26 L. Ed., 377.
Hurtado vs. People California, 110 U. S., 516, 28 L. Ed., 232.
Cooley's Constit. Lim. (7th Ed.), 594.
Holden vs. Hardy, 169 U. S., 391, 42 L. Ed., 790.
Ex Parte Tyler, 149 U. S., 164, 187, 37 L. Ed., 689, 697.
Great Southern Fire Proof Hotel Co. vs. Jones, 193 U. S., 532, 48 L. Ed., 778.
North Am., etc., Co. vs. Chicago, 211 U. S., 306, 53 L. Ed., 195.
Kuhn vs. Fairmont Coal Co., 215 U. S., 349, 54 L. Ed., 228.
Murdock vs. Mayor, 87 U. S. (20 Wall.), 590, 22 L. Ed., 429.
Scott vs. McNeal, 154 U. S., 34, 38 L. Ed., 896.

Lake County vs. Rollins, 130 U. S., 662, 32 L. Ed., 1060.

U. S. vs. Goldenberg, 168 U. S., 95, 42 L. Ed., 394.

The State Company vs. A. W. Jones, Comptroller General, filed Oct. 10, 1914.

U. S. vs. Freeman, 3 How., 556, 11 L. Ed., 724.

U. S. vs. Gilmore, 75 U. S. (8 Wall.), 330, 19 L. Ed., 396.

State vs. Pacific Guano Co., 22 S. C., 74.

Witte vs. Weinberg, 37 S. C., 579, 593.

Sharpe vs. Kinsman, 18 S. C., 108.

Lenhardt vs. French, 57 S. C., 493.

Williams vs. Irby, 15 S. C., 458.

Rd. Com. vs. C. N. & L., 82 S. C., 418.

ARGUMENT.

SPECIFICATION FIRST.

The Acts of 1907 and 1908, which created the State Dispensary Commission and authorized it to pass upon claims *against* the State, were valid because authorized by section 2 of Article 17 of the Constitution of South Carolina, 1895, which reads:

“Sec. 2. The General Assembly may direct by law, in what manner claims against the State may be established and adjusted.”

The creditors of the State Dispensary were creditors of the State, and, as such, were forced to rely entirely upon the honor and integrity of the State as security for the payment of their obligations. It was purely a political question as to whether these debts should be paid, and the Legislature could properly delegate the determination of such a question to a commission. *State vs. Dispensary Commission*, 79 S. C., 316; *Murray vs. Wilson Distilling Co.*, 213 U. S., 151, 53 L. Ed., 742. The State Dispensary Commission was, therefore, no court, proceeding judicially,

but a branch of the legislative department, proceeding legislatively. It was required to exercise discretion or judgment, but this was done in the discharge of its legislative duty of passing upon claims *against* the State, which in no wise cast upon it the character of a judicial tribunal. *Den vs. Hoboken L. & I. Co.*, 59 U. S. (18 How.), 272, 15 L. Ed., 372; *Ekin vs. U. S.*, 142 U. S., 651, 35 L. Ed., 1147.

The State, however, had no such limitless power in passing upon the question whether any person or corporation was indebted to it, because of dealings between such person or corporation and the State or any of its agencies. The State could not determine for itself that X was indebted to her and proceed to confiscate X's property by virtue of her superior might to satisfy her claims against X. The State must proceed to the collection of her claim, as any other claimant, by due process of law and not by confiscation, and due process of law requires "*actor, reus, judex*, regular allegations, opportunity to answer and trial according to some settled course of judicial proceedings." *Kilbourn vs. Thompson*, 103 U. S. (13 Otto), 168, 26 L. Ed., 377; *Den vs. Hoboken L. & I. Co.*, *supra*. Due process of law means "law in its regular course of administration through courts of justice. * * * The provision was designed to protect the citizen against all mere acts of power, whether falling from the legislative or executive branches of the government." *Hurtado vs. People of California*, 110 U. S., 516, 28 L. Ed., 232. A judicial question must be settled by a court. "To empower one party to a controversy to decide it for himself is not within the legislative authority, because it is not the establishment of any rule of action or decision, but is a placing of the other party, so far as that controversy is concerned, out of the protection of the law, and submitting him to the control of one whose interest it will be to decide arbitrarily and unjustly." Cooley's Const. Lim. (7th Ed.), page 594.

It is important to get the fact clearly in mind that the dealings of plaintiff in error with the State Dispensary prior to April, 1906, were absolutely distinct and separate

from the subsequent dealings out of which arose the present claim. The dealings prior to 1906 had been closed and ended in a manner satisfactory to both parties, plaintiff in error the one and the State of South Carolina the other. These dealings were ended by the Resolution of 1906 and the payment of plaintiff in error's account for the goods furnished up to that time. (R., p. 24.) *Prima facie*, at least, therefore, the State could have no claim arising out of the accounts that it had voluntarily paid and settled. Certainly, due process of law required that any such claim could be established only by a judgment rendered in a regular judicial proceeding, instituted by the State in one of the regularly established courts. There had never been such a proceeding and, consequently, there was no judgment.

It must be conceded that the claim of plaintiff in error against the State for goods furnished subsequent to 1906 was "property" within the protection of the Fourteenth Amendment, notwithstanding that such claim could not be enforced in the courts against the State debtor. *Holden vs. Hardy*, 169 U. S., 391, 42 L. Ed., 790.

Admitting these premises, and we submit that they cannot be successfully attacked, the necessary conclusion is that the so-called judgment of the Commission was in practical effect an adjudication of the validity of the alleged claim of the State arising out of the ended transactions prior to April, 1906, and a satisfaction of such a judgment by the confiscation of plaintiff in error's property; that is, its claim against the State for goods furnished since 1906.

The Supreme Court of South Carolina practically admits the premises leading to the conclusion last above set forth, but it denies this conclusion, saying that the Acts of 1907 and 1908 authorized the Commission to determine the validity of claims by the State against persons in so far as this was necessary or proper to determine the just liability of the State to such person or corporation. (R., p. 25.)

It is true that this is the construction of the Act by the highest Court of the State, but it is a construction denying to plaintiff in error the protection claimed by it under the Federal Constitution. Plaintiff in error's constitutional rights cannot be foreclosed as against a review by this Court in such a manner, and it follows that the construction of the statutes in question is still open for the consideration of this Court.

The rights of plaintiff in error in connection with its claim filed with the State Dispensary Commission were fixed at the time it filed its claim with said Commission on February 24th, 1907, and the construction given the Acts of 1907 and 1908 by the Supreme Court of South Carolina was in its opinion filed on November 29th, 1910, so that it is a case of a construction of a State statute after the rights of the parties had vested. *Ex Parte Tyler*, 149 U. S., 164, 187, 37 L. Ed., 689, 697; *Great Southern Fire Proof Hotel Co. vs. Jones*, 193 U. S., 532, 48 L. Ed., 778, *North Am. etc., Co. vs. Chicago*, 211 U. S. 306, 53 L. Ed., 195; *Kuhn vs. Fairmont Coal Co.*, 215 U. S., 349, 54 L. Ed., 228.

In this connection, we respectfully ask the careful consideration of the Court of the opinions in *State vs. Dispensary Commission*, *supra*, March 14th, 1908, 79 S. C., 316, and *Murray vs. Wilson Distilling Company*, *supra*, April 5th, 1909, 213 U. S., 151, where we submit that the Supreme Court of South Carolina, as well as this Court, construed the Acts of 1907 and 1908 as vesting the Commission with jurisdiction to consider only claims against the State. If the reasoning of those opinions is to be followed, we submit that it would be entirely illogical to conclude that these statutes vested the Commission with jurisdiction to reopen and reconsider previous transactions, closed and ended by the exercise of the sovereign power of the State (Resolution of 1906, Appendix D), and entirely disconnected with and separated from the question of the validity or justness of the open claims then filed with the Commission. We rely upon the construction given the statutes in these cases.

Since this Court has jurisdiction under Section 709, R. S. U. S., I Comp. Stat. 575, 4 Fed. Stat. Ann. 467, now Section 237 of the Judicial Code, to reverse, modify or affirm the judgment or decree of the highest court of a State in any suit where is drawn in question an authority exercised under any State, on the ground of its being repugnant to the Federal Constitution, the decision of such State Court being in favor of the validity of such authority, and also where a title, right, privilege or immunity is claimed under the Federal Constitution and the decision of the State Court is against such title, right, privilege or immunity, then if this question turns upon the construction of a statute and the decision of the Supreme Court of the State should be held to be conclusive upon this Court, it would be in effect denying the constitutional and statutory right of this Court to reverse, modify or affirm the judgment of the State Court. *Murdock vs. Mayor*, 87 U. S. (20 Wall.), 590, 22 L. Ed., 429; *Scott vs. McNeal*, 154 U. S. 34, 38 L. Ed., 896.

In the first place, the construction given the Act by the Supreme Court of South Carolina is in violation of the elementary rule that in the construction of statutes, words in common use are to be construed in their natural, plain and ordinary signification and that so long as the language is unambiguous, a departure from its natural meaning is not justified by any considerations of consequence or of public policy. *Lake County vs. Rollins*, 130 U. S., 662, 32 L. Ed., 1060; *U. S. vs. Goldenberg*, 168 U. S., 95, 42 L. Ed., 394.

As recently said by the Supreme Court of South Carolina in another case:

"One of the most elementary rules for the interpretation of statutes is that the intention of the Legislature must be gathered from a literal interpretation of the language of the statute, where it is plain and unambiguous. . . . When the meaning of words is so plain and obvious, the courts cannot speculate on the intention. To do so, would

be an assumption of legislative power." *The State Company vs. A. W. Jones, Comptroller General*, filed October 10, 1914.

Section 3 of the Act of 1907 (Appendix F) makes it the duty of the Commission to close out the business and property of the State Dispensary and the County Dispensaries, "by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable." The proviso to this section then proceeds to authorize the Commission to return "all liquors illegally bought by the present management" to the persons from whom purchased, "and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors," employ counsel, extra accountants and stenographers and take testimony. Section 8 gives the Commission power and authority to investigate the past conduct of the affairs of the Dispensary and vests it with the authority conferred upon the Committee by the Act of 1906. The amendatory Act of 1908 makes no substantial change except by the addition of Section 11, which gives the Commission full power "to pass upon, fix and determine all claims against the State, growing out of dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary, which have been or may hereafter be collected by said State Dispensary Commission."

It is inconceivable to the writer how this statutory authority can be tortured into an authority to reopen the dealings between plaintiff in error and the State, which had been closed by the action of the State itself, by the resolution of 1906, cancelling the existing contracts with plaintiff in error. The authority is expressly limited to the fixing and determining of claims "against the State growing out of dealings with the Dispensary" and to the paying for the State of "any and all just claims, which have

been submitted to it and determined by it, and no other. . . .” The Commission exercised its full authority in determining that the claim of plaintiff in error for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) was a just and valid claim, and it was absolutely without jurisdiction to proceed to open up and adjudge the validity of the claim against plaintiff in error which had been closed and ended, and which was not filed with the Commission or brought before it for consideration by any notice or claim whatsoever.

If the Acts of 1907 and 1908 could be properly construed as said by the Supreme Court of South Carolina, why was it necessary for the Legislature in 1910 to come forward with an additional enactment expressly authorizing the Commission to pass upon and determine the validity of claims in favor of the State, arising out of previous transactions with the Dispensary? The Act of 1910 shows clearly the legislative intention to invest the Commission with authority to determine the validity of claims in favor of the State, and this certainly is a legislative construction that the Acts of 1907 and 1908 did not invest the Commission with such authority, and as such, is entitled to be considered by this Court in reaching its conclusion as to the proper construction. *U. S. vs. Freeman*, 3 How., 556, 11 L. Ed., 724; *U. S. vs. Gilmore*, 75 U. S. (18 Wall.), 330, 19 L. Ed., 396.

There can be no question that “When the State comes into her Courts to assert a right of property, she is, of course, bound by all the rules established for the administration of justice between individuals.” *State vs. Pacific Guano Co.*, 22 S. C., 74. This rule must apply equally when the State comes into or subjects herself to the arbitrament of a special tribunal.

The rule governing a counter-claim or set-off under the Code practice in South Carolina is found in Sections 170 and 171 of the Code of Civil Procedure, 1902, reading as follows:

"Section 170. The answer of the defendant must contain :

"1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

"2. A statement of any new matter constituting a defense or counter-claim, in ordinary and concise language, without repetition.

"Section 171. The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

"1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

"2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

"The defendant may set forth by answer as many defences and counter-claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They must each be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished."

Even in the regular courts of South Carolina, the claim of the State, which must be predicated upon fraud or deceit in the ended transactions prior to April, 1906, could not be set off, as a counter-claim, or otherwise, against the claim of plaintiff in error, sounding in debt for the goods sold subsequent to April, 1906, and this for two reasons: 1. Because it does not arise out of the contract or transaction and is not connected with the subject of the action represented by plaintiff's claim against the State.

Witte vs. Weinberg, 37 S. C., 579, 593; and 2. Because the State's claim against plaintiff would sound in tort, while the plaintiff's claim against the State would sound in contract, and under our practice, a counter-claim in tort cannot be set up against a cause of action in contract. *Sharp vs. Kinsman*, 18 S. C., 108; *Lenhart vs. French*, 57 S. C., 493.

And even where the Court allows the counter-claim, it cannot be considered unless it has been duly pleaded and the other party put on notice. *Williams vs. Irby*, 15 S. C., 458. As we have heretofore pointed out, the Commission could not be invested with jurisdiction of the claim of the State against plaintiff in error, without its consent, and as we heretofore pointed out more distinctly, the plaintiff in error never consented to the Commission exercising any such jurisdiction.

We respectfully submit that these considerations show that the Acts of 1907 and 1908 did not authorize the State Dispensary Commission to consider transactions between plaintiff in error and the State of South Carolina prior to April, 1906, which had been settled and ended. This being true, we submit that the action of the Commission in going into and attempting to render judgment of offset on account of such previous ended transaction was without authority of law, and, therefore, a nullity; and, further, that the judgment of the Commission in itself established the validity of plaintiff in error's claim filed with that Commission, and this being within the statutory authority of the Commission, that the Supreme Court of South Carolina should have declared the so-called over-judgment or judgment on the offset a nullity and the judgment approving plaintiff's claim as legally establishing it. It is said that the Constitution protects as well against insidious and indirect approaches as against direct attacks, and we submit that any other conclusion would allow the State of South Carolina, proceeding through the agency of the Commission, to itself adjudge the validity of an alleged claim in favor of itself against plaintiff in error, and to

proceed to the satisfaction of such judgment, by confiscating the claim of plaintiff in error filed with the Commission.

SPECIFICATION SECOND.

But even should this Court reach the conclusion that the Supreme Court of South Carolina was correct in construing the Acts of 1907 and 1908 as investing the Commission with jurisdiction to consider and pass upon claims in favor of the State to the extent necessary to defeat claims against the State, we submit that the same result must follow. Even though the Statutes of 1907 and 1908 did authorize the Commission to consider claims in favor of the State to the extent necessary to defeat claims against the State, and even though this was a proceeding before a legislative commission, due process of law required that there must be some reasonable notice and opportunity to be heard given to claimant presenting claims before such Commission. Plaintiff in error filed its claim, as stated above, for twenty-three thousand, thirteen and 75-100 dollars (\$23,013.75) as and for the balance due for goods furnished the State Dispensary in April, 1906, and subsequently. If the Commission was going to consider a supposed claim of the State arising out of prior closed and ended transactions by way of offset, counter-claim or otherwise, we submit the due process of law required that reasonable notice and opportunity to be heard be given claimant of such offset or counter-claim, and the record not only fails to show affirmatively that plaintiff in error had such reasonable notice and opportunity to be heard on this offset, but, on the contrary, shows that it was only after the closing of the testimony and at the time of proceeding to argument of counsel, that the State announced its position, after admitting the validity of plaintiff in error's claim as filed with the Commission, by stating generally that "we have assumed the burden to show that the State had certain offsets or counter-claims which would reduce it" (Record, page 8), and upon request of plaintiff

in error, at even that late day, that it be put on reasonable notice of what offsets were claimed, this request was denied. It will be observed also from the record that plaintiff in error in no wise consented to the consideration of any offset by the Commission. (Pp. 4-11.) In this connection, we would respectfully call the Court's attention to the case of *Rd. Com. vs. C. N. & L. R. R. Co.*, 82 S. C., 418, in which the Supreme Court of South Carolina held that a statute authorizing a legislative or administrative board to impose certain burdens was not invalid, because there was no provision for notice and hearing, because such statute would be construed as subordinate to the constitutional provision requiring reasonable notice and opportunity to be heard to be given. We submit, therefore, that the result in this case is the same whether the Statutes of 1907 and 1908 authorized the Commission to consider the offset or not, because if they authorized consideration of the offset they authorized its consideration only upon reasonable notice and opportunity to be heard—and such was not given.

SPECIFICATION THIRD.

It follows from the preceding premises that if the plaintiff in error had any vested rights in the moneys due it by the State Dispensary, and such rights were destroyed and denied by virtue and as a consequence of the over-judgment, which was void, then plaintiff in error has been deprived of its property without due process of law, denied the equal protection of the laws and suffered an impairment of its contractual rights within the meaning of the Federal Constitution.

No. 70 (No. 391, OCTOBER TERM, 1913.)

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN Mc-
SWEEN, ET AL., CONSTITUTING THE STATE
DISPENSARY COMMISSION, ET AL.,

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH
CAROLINA.

STATEMENT OF THE CASE.

This writ brings up the judgment of the Supreme Court of South Carolina in an action instituted by plaintiff in error in the original jurisdiction of that Court to enjoin defendants, constituting the State Dispensary Commission and its legal advisers, from imposing a cloud on and proceeding to confiscate certain property of plaintiff in error, in satisfaction of the so-called over-judgment of said Commission in favor of the State for twenty-four thousand, four hundred nineteen and 24-100 dollars (\$24,419.24), rendered on the claim filed by the plaintiff in error with said Commission, referred to at length in No. 85 preceding.

The verified complaint, upon which the order to show cause was issued, alleged in substance:

That plaintiff (plaintiff in error) was a corporation under the laws of South Carolina, owning valuable real estate in the City of Columbia and Richland County; and that the individual defendants, respectively, constituted the State Dispensary Commission and its legal advisers and counsel under the Act of 1908. (Appendix G.) (R., pp. 1-2.)

That plaintiff had for several years prior to 1906 sold glass bottles, etc., to the State Dispensary, and during 1906 and 1907 sold and delivered, under contracts with the

Board of Directors of the State Dispensary, bottles, etc., of the value of \$99,108, upon which there was a balance due of \$23,013.75. That plaintiff filed its claim for this sum, and the Commission, on November 17th, 1909, filed its judgment to the effect that plaintiff's claim was *per se* valid, but was offset by overcharges made by plaintiff in its contracts preceding 1906, to the extent of \$51,432.99, leaving plaintiff indebted to the State in the sum of \$28,419.24; that this judgment of the Commission was beyond its jurisdiction and void, and that plaintiff had appealed therefrom to the Supreme Court of South Carolina, which appeal was then pending. (R., pp. 2-4.)

That plaintiff, since the organization of the county dispensaries, under the Act of 1907 (see Appendix E), had been selling bottles to them, and on the 20th day of November, 1909, had orders for the prompt shipment of bottles to the county dispensaries for the Counties of Richland and Aiken and others, and had moneys due it by certain of such dispensaries for goods shipped; and then learning that his Excellency, the Governor, at the instance and request of the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensaries, directing them to withhold the amounts that might be due by such County Dispensaries to certain persons and corporations, plaintiff caused its attorneys to approach the Governor and Hon. J. Fraser Lyon, Attorney General, and to state to them the condition of affairs with reference to the dealings between plaintiff and such dispensaries, and plaintiff's counsel were referred to the defendant, Mr. W. F. Stevenson, who was said to have the matter in charge; that thereupon, on the 20th day of November, one of plaintiff's counsel, Mr. W. H. Lyles, at Columbia, S. C., called up the defendant, Mr. W. F. Stevenson, at Cheraw, S. C., and was informed by the said Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to plaintiff on account of goods that might be sold or shipped to the said County Dispensaries, on or after the 20th day of November, 1909,

and, upon request, the said Stevenson confirmed this statement in writing by the following letter:

"STEVENSON & MATHESON,
"Attorneys at Law.

"Cheraw, S. C., Nov. 20, '09.

"Mr. Wm. H. Lyles, Atty., Columbia, S. C.

"My Dear Sir: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meantime. The company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

"Yours most truly,

"(Signed)

W. F. STEVENSON.

"cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon."—(R., pp. 4-5.)

That pursuant to this agreement and understanding and relying implicitly thereon, the plaintiff continued to ship goods to the County Dispensaries until February 26th, 1910, they having received no notice from any one that the agreement would be violated or terminated, and on that day, the County Dispensaries of Richland, Georgetown, Aiken and Beaufort were indebted to plaintiff in the ag-

gregate sum of \$6,355.92, for goods sold and shipped after November 20th, 1909; that on said 26th February, 1910, it was brought to plaintiff's attention that a notice, reading as follows:

"State of South Carolina,

"Richland County:

"The State

vs.

"Carolina Glass Co.

"Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Co. of \$29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina, owing to overcharges made by the said defendant in selling goods to the late State Dispensary, and this notice is given in accordance with the terms of an Act of the Legislature passed in February, 1910, and duly approved by the Governor.

"(Signed)

J. FRASER LYON,

"Attorney-General.

"B. L. ABNEY,

"ANDERSON, FELDER, ROUNTREE & WILSON,

(R., p. 5.)

Of Counsel."

had been filed in the office of the Clerk of Court for Richland County and duly recorded as an action pending, and that a similar notice had been served upon the Chairman of the Board for the county of Richland, and plaintiff inferred that a similar notice had been served upon the County Dispensaries of Georgetown, Aiken and Beaufort. That this action was wholly without authority of law, the defendants claiming to proceed under Section 7 of the Act

of 1910 (see Appendix H), which plaintiff alleged could not be construed to apply to any action of the State Dispensary Commission prior to the Act of 1910, and that if so construed, the same was unconstitutional, null and void, because in conflict with Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and Section 10, Article I and the Fourteenth Amendment to the Constitution of the United States. (R., pp. 5-6.)

That the defendants, undertaking to proceed under Section 6 of the Act of 1910, had served upon the County Dispensary Board of Richland County a notice requiring said Board to pay over to the State Dispensary Commission the money owed by such Board to plaintiff, by virtue of the above mentioned illegal offset found to be due by plaintiff to the State of South Carolina, in the so-called judgment of the said State Dispensary Commission of November 17th, 1909, and plaintiff alleged that such notice and demand would also be made upon each of the other County Dispensaries. This action was alleged to be without authority of law, as the provisions of Section 6 of the Act of 1910 were unconstitutional, because constituting an effort to confiscate the property of plaintiff without due process of law, in violation of Sections 5 and 8 of Article I of the Constitution of South Carolina, and Section 10, Article I, and the Fourteenth Amendment to the Constitution of the United States, and, furthermore, in violation of the express contract and agreement between plaintiff and the State Dispensary Commission, through the defendant, Stevenson. (R., p. 6.)

These acts were alleged to be a cloud upon plaintiff's real estate in the County of Richland, and an interference with plaintiff in the conduct of its business and impairment of its credit, amounting to irreparable injury. The prayer was for perpetual injunction, restraining defendants from allowing notices to be continued on file in the office of the Clerk of Court for Richland County, and from in any manner demanding or receiving sums due plaintiff by the County Dispensaries, and from in any manner interfering with

the payment of such sums, and for other and further relief. (R., pp. 6-7.)

This complaint was verified by John J. Seibels, President of the plaintiff corporation (Record, p. 7), supported by the affidavits of Wm. H. Lyles and John T. Seibels of counsel for plaintiff as to the agreement on November 20th with defendant Stevenson. (R., pp. 8-10.)

RETURNS.

The defendants, Murray, Chairman, McSween, Wood, Patton and Price, constituting the State Dispensary Commission, made return to the rule to show cause, and answered to the complaint, in effect, as follows:

They admitted that they constituted the State Dispensary Commission, having been duly appointed by the Governor under the Acts of 1907 and 1908; that the defendant Lyon, as Attorney General, was adviser of the Commission; that the defendants Stevenson and Abney had been employed as special counsel covering the claim of plaintiffs and that the other defendants, constituting the firm of Anderson, Felder, Rountree & Wilson, were employed by it with the approval of the Attorney General, to represent the interests of the State in certain claims, including plaintiffs, such employment being authorized by the Act.

They admitted the character of business that plaintiff was generally engaged in and the filing of the plaintiff's claim with the Commission on February 24th, 1907, for \$23,013.75, and the judgment of the Commission rendered on the 17th day of November, and that plaintiff had appealed from said judgment, which appeal was then pending in the Supreme Court of South Carolina. (Record, pp. 11-16.) This return then admitted a resolution of November 17th, 1909, calling upon the Dispensary Auditor to hold up the payment of sums due by certain County Dispensary Boards to certain parties, but that plaintiff's name was not contained in this resolution. (Record, pp. 16-17.)

That on November 17th, 1909, plaintiff was due the aggregate sum of \$10,890.45 from the County Dispensary

Boards of Abbeville, Bamberg, Barnwell, Colleton, Fairfield, Georgetown, Kershaw, Laurens, Orangeburg, Richland, and Sumter Counties, and that such amounts were properly applicable as a credit to the amount due the State by the plaintiff (Record, p. 17); that the agreement of November 20th, 1909, between plaintiff's counsel and defendant Stevenson, was that no interference would be made with money coming from any shipments made from the date of Mr. Stevenson's letter (November 20th, 1909,) until further notice, and that with regards to the amount then due plaintiff by the County Dispensaries, the attorneys would confer and reach a determination, but that plaintiff, in violation of this agreement, collected from the County Dispensaries \$4,534.33 from the amount then due, which constituted a violation of the agreement by plaintiff. (Record, p. 18.)

This return then sets up the Act of 1910 (Appendix H), and attempts to justify the action of the defendants in filing the notice in the office of the Clerk of Court for Richland County, and in serving the notice upon the County Dispensary Board of Richland County to pay over the moneys due by said Board to plaintiff. That defendants were required to take this action by virtue of the duties imposed upon them by the Act of 1910, and it was not their intention to violate or affect the terms of the agreement made by Mr. Stevenson on November 20th, but merely to require the payment to the State Dispensary Commission of the moneys already due by the County Dispensaries to plaintiff on the 20th November. (Record, pp. 18-20.)

RETURN OF DEFENDANT STEVENSON.

Mr. Stevenson made a return in which he claimed that the agreement of November 20th, 1909, between himself and Mr. Lyles, representing the plaintiff, to the effect that the amounts due by the County Dispensaries would not be held up, had referred only to such amounts as should become due after November 20th, and it had no application to amounts then due plaintiff by the County Dispensaries,

and that the moneys then due would not be withdrawn by plaintiff. (Record, pp. 23-27.)

RETURN OF DEFENDANT ABNEY.

Mr. Abney adopted the return of the Commission hereinbefore referred to and admitted that he was retained as counsel by the State Dispensary Commission, covering plaintiff's claim, and that he concurred with the other counsel that it was proper to file the notice in the office of the Clerk of Court and serve the demand upon the County Dispensary Board for Richland County, but that he had no personal knowledge concerning these matters. (R., pp. 26-27.)

RETURN OF ATTORNEY GENERAL.

Mr. Lyon, by way of return, admitted that he was Attorney General, and, as such, was, under the statutes, the legal adviser of the State Dispensary Commission, and, as such, had referred Messrs. Lyles and Seibels, attorneys for plaintiff, to Mr. Stevenson, as the active representative of the Commission for a settlement of the matter of the claims of plaintiff against the County Dispensaries.

He further made return that he had acted only in his official capacity as Attorney General, according to law, and that he was not liable or responsible for the advice given and conduct concerning such matters in any action in the Courts of this State, either individually or as an officer of the State, and that the complaint stated no cause of action against him. (R., pp. 28-29.)

RETURN OF OTHER DEFENDANTS.

The other defendants, constituting the firm of Anderson, Felder, Rountree & Wilson, made a return adopting the statements in the returns of other co-respondents, so far as the same was applicable to them. (R., p. 30.)

REFERENCE OF ISSUES.

The issues of fact were referred to the Master, and the testimony taken thereon. (R., pp. 31-35.) The only real issue appearing, and the only one with which this Court is concerned is as to the agreement between the attorneys concerning the shipments to be made to the County Dispensaries and the moneys due and to be due from the County Dispensaries. The Master found on this point as follows:

“ . . . I find as matter of fact that no positive agreement was reached over the telephone, but that the agreement that was made is embodied in the letter of Mr. Lyles to Mr. Stevenson (the substance of which was communicated to him over the telephone) and the reply of Mr. Stevenson thereto (said reply having been written before the receipt of Mr. Lyles' letter), said letter having been promptly received by Mr. Lyles, and became the basis of his action in the matter in controversy.” (R., p. 54.)

The letter from Mr. Lyles to Mr. Stevenson is found in the Record, pp. 4 and 5, and the letter from Mr. Stevenson to Mr. Lyles is found in the Record, at p. 9.

MANNER IN WHICH QUESTIONS ARE RAISED.

The Supreme Court of South Carolina held that the County Dispensaries were conducted “under the authority and in the name of the State,” that the officers in charge of them were agents of the State, and that the funds arising from the sale of liquors through them were the funds of the State, and the debts due for goods sold to them were the debts of the State, and furthermore, that the Dispensary Commission and its counsel were the agents and representatives of the State. The Court then held that the Commission, in ordering the funds in the hands of the County Dispensaries, due and owing to the plaintiff in error, to be turned over to the Commission was acting

within the limits of its authority and discretion as conferred upon it by the Legislature, and that the Supreme Court had no power to interfere. As to the alleged lien over the property of the plaintiff and the notice of the pendency of the action filed in the office of the Clerk of Court of Common Pleas for Richland County, where plaintiff in error's real estate was situated, however, the Court held that these were invalid, because:

1. The Act of 1910 was not retroactive and could not operate to create a lien upon the property of plaintiff in error by virtue of the prior judgment of the Commission, and because

2. The Act of 1910, in so far as it attempted to vest in the Commission the power to pass final judgment upon a claim of the State against plaintiff in error, was unconstitutional in that it was an effort to vest judicial power in the Commission, which was no court, and so was not due process of law.

This Court will see at first glance that the Supreme Court of South Carolina held that the so-called over-judgment of the Commission was entirely invalid to operate under the subsequent Act of 1910 as a final judgment on the alleged claim of the State against plaintiff in error and create a lien upon plaintiff's real estate, while, at the same time, it held that the so-called over-judgment was entirely valid and proper to operate under the Act of 1910, and authorize the defendants to sequester and confiscate the moneys due and owing to plaintiffs from the County Dispensaries, upon the theory that the plaintiff in error had absolutely no right in or connected with such moneys so as to protect it against their confiscation by the brutal power of the State, without the justification of any proceedings according to due process of law. This ruling of the Court gives rise to the two propositions that we make before this Court and the failure of the Court to hold which we now specifically assign as error, as follows:

SPECIFICATION OF ERRORS RELIED UPON.

SPECIFICATION FIRST.

That the so-called over-judgment of the Commission of November 20th, 1909, was absolutely null and void.

SPECIFICATION SECOND.

That the plaintiff in error had contract and property rights in the money due and owing it from the County Dispensaries and the sequestration and confiscation of this money by the defendant claiming to act by virtue of their office as members and advisers of the State Dispensary Commission by virtue of the so-called over-judgment of November 20th, 1909, and the authority claimed to have been conferred upon them by the Act of 1910, impaired the obligation of plaintiff in error's contract rights with reference to such moneys, in violation of Section 10, Article I, of the Constitution of the United States, deprived plaintiff in error of its property without due process of law and denied to plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment.

AUTHORITIES CITED.

- Curran vs. Arkansas*, 15 How., 304, 14 L. Ed., 705.
Dabney, Morgan & Co. vs. Bank of S. C., 3 S. C., 125.
Baring vs. Dabney, 86 U. S., 1, 22 L. Ed., 95.
Davis vs. Gray, 83 U. S. (16 Wall.), 203, 21 L. Ed., 447.
Green vs. Biddle, 8 Wheat., 1, 92, 5 L. Ed., 547, 570.
Bank vs. Sharpe, 6 How., 301, 12 L. Ed., 448.
Edwards vs. Kaersey, 96 U. S., 595, 24 L. Ed., 793.
State vs. Dispensary Commission, 79 S. C., 316.
Murray vs. Wilson Distilling Co., 213 U. S., 151.

Argument.

SPECIFICATION FIRST.

The claim of the State against plaintiff in error for overcharges arising out of the dealings between plaintiff in error and the State Dispensary, prior to April, 1906, was a claim necessarily founded upon fraud or deceit in the settlement of 1906 or the prior dealings then settled. The State could not establish or adjudicate such claim by legislative fiat, since due process of law required its adjudication by a regular proceeding in a court of justice.

The Dispensary Commission, under the Acts of 1907 and 1908, was no court, but a representative of the legislative department endowed only with legislative functions. The Acts of 1907 and 1908 did not attempt to endow the Commission with authority to adjudge the validity of claims in favor of the State, but if they made such an effort, it was a futile one because in conflict with the Fourteenth Amendment.

So, in either view, the Commission had no constitutional authority to render a judgment on the claim of the State against plaintiff in error, and its effort to do so was a nullity.

This is elementary, is sustained by the authorities cited in our argument under No. 85, *supra*, and is recognized in the very opinion of the Supreme Court of South Carolina. We quote:

"The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant." R., p. 64.)

"The Constitution ordains (Art. I, Sec. 14) that 'the legislative, executive and judicial powers of

the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.' This language is as strong as it is simple and clear. The Legislature, therefore, cannot assume to itself the exercise of judicial powers. *Seegers vs. Parrott*, 54 S. C., 1. Nor can it confer 'judicial powers,' in the sense in which those words are used in the Constitution, upon any other body than the Courts mentioned and provided for in Section I, Article V, of the Constitution, which provides that 'the judicial power of this State shall be vested in' the Courts therein specifically mentioned and provided for. The few instances in which judicial power is vested elsewhere are provided for in the Constitution itself, and, with these few exceptions, the whole of the element of sovereignty known as judicial power was vested by the people in their Courts, and none of it was left to be lodged elsewhere. In fact, every person exercising the functions of either of the other departments of the Government are forbidden to assume or discharge those vested in the Courts. We have already seen that the Dispensary Commission is not a court within the meaning of the judicial article of the Constitution, but is a special tribunal, created under the power of the Legislature to investigate the financial affairs of the State, and that provision of the Constitution which authorizes the Legislature to direct by law how claims against the State shall be established and adjusted. . . ."

(R., pp. 68-69.)

" . . . It would not be contended for a moment that the Legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid Act declaring that a particular individual is indebted to the State in a given amount, and by legislative fiat create a lien upon

his property. Such an Act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitutional guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the law. If, then, the Legislature could not pass such a judgment, it cannot confer upon a commission the power to do so. The creature cannot be greater than the creator. . . . We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the Act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void." (R., pp. 69-70.)

The over-judgment of the Commission was a nullity and furnished no legal authority to defendants to proceed under the Act of 1910 to confiscate the money due plaintiff in error in the hands of the County Dispensaries. If plaintiff in error had any vested rights concerning such moneys, property or contractual, within the protection of the Federal Constitution, then these rights should have been protected by the Court.

SPECIFICATION SECOND.

"Exhibit C," filed by the defendant on the reference before the Master, shows that on November 20th, 1909, the various County Dispensaries were indebted to plaintiff in the aggregate sum of \$10,420.14, and that on February 26th, 1910, this indebtedness had been increased to \$11,912.44, and after November 20th, the various County Dispensaries had paid to plaintiff in error the aggregate sum of \$6,915.95. (R., pp. 52, 54.) This indebtedness arose out of the sales of goods by plaintiff in error to the County Dispensaries which were made under the terms of the Act

of 1907. (Appendix E.) This constituted a contract, and the question is whether it was a contract of such a character as to give plaintiff in error any rights within the impairment and due process clauses of the Federal Constitution.

We submit that the scheme of the Act of 1907 was to make the funds and business of each of the County Dispensaries a separate and distinct fund; to segregate such particular fund from the general funds of the State of South Carolina, and to make such particular fund responsible for the obligations incurred with reference to it: in this way, creating a fund in which plaintiff in error, as a creditor thereof, acquired vested contractual and property rights within the protection of the Constitution.

The Act of 1907, after forbidding the sale of alcoholic liquors in other manners, proceeds (Section 2) to provide for a special election in each County to determine whether liquor shall be sold in such County and "whether one-third of the license fees and Dispensary profits" shall be paid to the County Treasurer, to be applied to the County school fund or to roads and bridges.

Section 5 proceeds to provide for the appointment of a "County Dispensary Board" by the Governor, upon the recommendation of certain County officers, certain officers of any municipality within which a dispensary may be located, and the county delegation to the General Assembly, with the proviso that in certain counties the recommendation is to vary between these classes of recommenders. Each member of the Board is required to furnish bond and the Board is required to organize by the election of a chairman and a secretary from among their number. Provision is made for compensation for the members of the Board. The Board is authorized and required to establish dispensaries for the sale of alcoholic liquors at such places within their County as they deem proper, and to make rules and regulations for the government of such dispensaries. The Board is required to elect dispensers, clerks, etc., and to provide for their compensation.

Section 6: "The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: *Provided*, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made."

Section 7 requires the Board to advertise for bids to supply liquors and specifies the manner in which bids shall be submitted "and the contract awarded to the lowest responsible bidder of each kind, the Board reserving the right to reject any bid. . . . Said award shall be forthwith published once in a newspaper published in the County. Said published statement shall include the grade of goods purchased, quantity of each grade purchased, from whom purchased, price per gallon, or dozen packages, and the retail price at which the same is to be sold. . . ."

Section 8 requires an analysis of the liquors to determine their purity, and "If upon analysis it shall be determined that such liquors are adulterated or impure, the County Dispensary Board may retain the price thereof from the seller, or if they have been paid for, the said Board shall not allow said liquors to be sold, and may, in the name of the State, institute an action against the seller for the recovery of the amount so paid."

Section 9: "The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the County during that week."

Section 11: "Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by him from sales."

Section 13: "All sales shall be for cash and at a profit to be determined by the Board."

Section 18 requires the County Dispensary Board to file quarterly with the Clerk of Court a sworn statement of the profits of each dispensary in the County for the three preceding months, and requires this statement to be recorded by the Clerk and published by the Board in a newspaper. The Board is then required to divide the profits into three equal parts, one-third to be paid to the County Treasurer for ordinary expenses, one-third to the same officer for the County school fund or for roads and bridges, and one-third to the treasurer of the municipality in which the dispensary is located for ordinary expenses.

Section 35 specifically provides that in the event a dispensary established under the Act should afterwards be voted out, the County Dispensary Board in such County "shall immediately close the Dispensary therein, dispose of the stock on hand for cash . . . , apply the proceeds thereof, with any other assets, to the payment of outstanding obligations, and divide the net proceeds as hereinbefore provided for Dispensary profits."

Sections 39 to 44 provide for the appointment of a Dispensary Auditor to examine at least once every three months into the affairs of all dispensaries and liquor manufacturing establishments conducted in the State. The Auditor is required to examine all books, papers and affairs of such concerns, with authority to administer oaths and to summon and examine all persons connected with them, and is required to file a detailed report with the State and County Treasurers. The Auditor is required to prescribe a system of bookkeeping and accounts for the several Boards and to enforce the observance of the same.

We submit that this shows an intention on the part of the State to make the funds of each County Dispensary applicable first to the payment of the expenses of such institution, including the purchase price of supplies bought by such institution, with the understanding that the State was not liable for such purchase price beyond the assets of the Dispensary in question, and conversely, neither the State nor County had any interest in such assets until

after such expenses had been paid and the profits reached. When Section 11 requires each Dispenser to deposit to the credit of the County Board in a bank designated by the Board all moneys received by him from sales; when Section 9 requires the Board to publish monthly sworn statements of the receipts, expenditures and liabilities of each Dispensary; when Section 13 provides that all sales are to be for cash and at a profit, and when Section 18 requires a quarterly division of the profits in each County, then we submit that the intention of the General Assembly is clearly shown, as strongly as if express language was used, that the moneys received by the County Dispensaries, operating as a unit in each County, are to be subject first to the expense of such institution, including the money owed for goods purchased. The Act specifically provides for the dispensation of the profits, and the provisions quoted show the necessary, if not express, implication that the County Boards are to pay for goods purchased. Section 8 recognizes this by requiring the County Board to withhold the price of defective liquors or to recover the price if it has been paid. Section 35 requires in the case of a defunct dispensary in any County that the assets are to be first applied "to the payment of outstanding obligations."

The practical operation of the County Dispensaries under this Act shows that the State has always treated the County Dispensary Boards just as it has other departments of the County government. The Board is selected, one by the County Board of Education, one by the town or city officers of the municipality in which a dispensary is located and one by the members of the County legislative delegation. The Governor commissions the Board just as he does other County officers. The funds in the possession of said Board arising from the sale of liquors are applied, first, to the payment of the debts for such liquors and supplies, and to the expenses of operation, and then divided and paid out for county and municipal purposes. Other than the attempt in the Act of 1910, there has never been any effort on the part of the State to claim or enforce any

interest even in the profits arising from the operation of the County Dispensaries, and much less has there ever been an effort on the part of the State to claim any interest in the funds due to the creditors of such dispensaries.

It would be absurd to contend that the Act did not contemplate that the County Dispensary Boards were to pay for supplies purchased. The Dispensaries were intended to operate as ordinary business institutions and the only logical deduction from the Act, if it is not expressly provided, is that they were to pay for such supplies, because, otherwise, the primary purpose to conduct such business on a commercial basis could not be accomplished.

We submit that this situation comes within the head, to use the language of Judge Story, "of implied trusts upon presumed intention (although it might equally well be deemed to fall under the head of implied trusts by operation of law). . . ." *Curran vs. Arkansas*, *infra*.

We rely particularly upon *Curran vs. Arkansas*, 15 How., 304, 14 L. Ed., 705, in support of this position. There the State incorporated a bank "with the usual banking powers of discount, deposit and circulation," and the State was its sole stockholder. The capital stock of the bank was raised by the sale of State bonds, together with certain other sums paid in by the State. The plaintiff was the owner and bearer of bills of the bank, and the Court held that the State could not afterwards divert the capital stock of the bank, because it had become a trust fund, impressed with a trust, by implication or operation of law, in favor of the plaintiff. There was no express provision in the Act creating and defining the powers of the bank, authorizing or requiring it to pay the bills of credit it might issue. Such a provision would have been absurdly superfluous because the authority to issue naturally carried the authority and requirement to pay. So, under our Act, the authority to buy carries by necessary implication the authority and requirement to pay, because it would have been absurd to presume that the sellers of liquors and supplies would donate them to these county institutions.

It is true that the County Dispensary Boards are not technically corporations, such as the bank, but they are created by the Act as a unit or a legal organization to conduct this business, and so far as this difference goes, it is a distinction but not a difference. The County Dispensary Boards were made by the Act agents of the State for the purpose of conducting this business and the State deposited its property in their hands (or rather provided a manner in which such institutions could acquire a fund upon which to do business), and by this statute held out to the sellers of supplies and liquors that if they would deal with the County Dispensaries, they would be paid for liquors and supplies purchased, out of the funds arising from the sale of such by the County Dispensary Boards, with the express limitation only that the State would not be liable beyond the assets of such Board, but with the further inducing statement that neither the State nor the County claimed any interest in the funds in hand of such Boards until expenses had been paid.

In answer to the proposition that, under such circumstances, the State could afterwards confiscate the funds in the hand of such Boards which lay there to pay the admittedly *bona fide* claim of a creditor, we refer the Court to the language in *Curran vs. Arkansas*, and submit that it is conclusive:

"The obligations of its contracts, the funds provided for their performance, and the equitable rights of its creditors were in no way affected by the fact that a sovereign State paid in its capital, and consequently became entitled to its profits. When paid in and vested in the corporation, the capital stock became chargeable at once with the trusts, and subject to the uses declared and fixed by the charter, to the same extent, and for the same reasons, as it would have been if contributed by private persons . . .

"If a person deposit his property in the hands of an agent, he may revoke the agency and withdraw his property at his pleasure. But if he should request third persons to accept the agent's bills, informing them, at the same time, that he had placed the property in the hands of that agent to meet the bills at their maturity, and upon the face of such assurance the agent's bills are accepted, the principal cannot, by revoking the agency, acquire the right to withdraw his property from the hands of the agent.

"It is no longer exclusively his. They who, on the faith of its deposit, have changed their condition, have acquired rights in it. The matter no longer rests in a mere delegation of a revocable authority to an agent, but a contract has arisen between the principal and the third persons from the representation made, and the acts done on the faith of it, and the property cannot be withdrawn without impairing the obligation of that contract. . . .

"The bank received this money from the State as the fund to meet its engagements with third persons, which the State, by the charter, expressly authorized it to make for the profit of the State. Having thus set apart this fund in the hands of a bank, and invited the public to give credit to it, under an assurance that it had been placed there for the purpose of paying the liabilities of the bank, whenever such credit was given, a contract between the State and the creditor not to withdraw that fund to his injury, at once arose. That the charter, followed by the deposit of the capital stock, amounted to an assurance, held out to the public by the State, that anyone who should trust the bank might rely on that capital for payment, we cannot doubt. And when a third person acted on this assurance, and parted with his property on the faith of it, the transaction had all the elements of a binding contract, and the

State could not withdraw the fund, or any part of it, without impairing its obligation. . . .

"In our judgment, the State cannot be considered to have occupied this position. It had placed its bonds in the possession of the bank, with authority to sell them and hold their proceeds as capital. It had also paid over to the bank certain other funds, with an express declaration, contained in the thirteenth section of the charter, that these also were to be part of its capital, and were to have credited to them their proportion of dividend of the profits of the business. All these moneys were thus set apart in the hands of the bank, as a fund, upon the credit of which it was to issue bills, and which was to be liable to answer the engagements of the bank, contracted to its creditors, in the course of the business which it was authorized to transact for the profit of the State. Such is the necessary effect of the express declaration in the charter, that these funds constitute the capital of the bank."

Curran vs. Arkansas was expressly approved in *Dabney, Morgan & Co. vs. Bank of S. C.*, 3 S. C., 125, and *Baring vs. Barney*, 86 U. S., 1, 22 L. Ed., 95.

We deem it unnecessary to argue further that the terms and provisions of the Act of 1907 entered into the contracts of sale between plaintiff in error and the County Dispensary Boards, even though the latter were acting as agents of the State, and that the State is bound by her contract and cannot later impair its obligation to the slightest extent or deprive plaintiff in error of its property rights with reference thereto, without due process of law. *Davis vs. Gray*, 83 U. S. (16 Wall.), 203, 21 L. Ed., 447; *Green vs. Biddle*, 8 Wheat., 1, 92, 5 L. Ed., 547, 570.

The impairment clause forbids any change affecting the validity, construction, discharge or enforcement of the contract. It forbids any impairment at all. It is not a question of degree, or manner or cause, but of in any way

destroying the value of the contract of plaintiff in error. *Bank vs. Sharpe*, 6 How., 301, 12 L. Ed., 548; *Edwards vs. Kaersey*, 96 U. S., 595, 24 L. Ed., 793.

This shows that plaintiff in error had rights in the contracts with the County Dispensary Boards, even though such Boards were agents of the State, which were within the protection of the impairment and due process clauses of the Federal Constitution, and if this be true every court that has handled the matter has admitted that the action of defendant was entirely without authority of law and in violation of such constitutional protection.

STATE VS. DISPENSARY COMMISSION AND MUR-
RAY VS. WILSON DISTILLING COMPANY
DISTINGUISHED.

We would respectfully refer the Court to the essential distinction between the questions presented to the Supreme Court of South Carolina in *State vs. Dispensary Commission*, *supra*, 79 S. C., 316, and this Court in *Murray vs. Wilson Distilling Company*, 213 U. S., 151, where the Courts considered the effect of the State Act of 1896, as amended in 1897 (which is practically the same as the Act of 1900, which amends such previous Acts and is printed as Appendix A), in connection with the effect of the Act of 1907. (Appendix F.) The decisions, of course, turn on the question of the right of the State to vest in the Commission a discretion to determine the just debts of the State for purchases of liquor. The Supreme Court of South Carolina, at 79 S. C., 331, has in mind the distinction that we have argued at length between general funds of the State and the rights of a general creditor of the State therein or thereto, and specific funds of the State which are segregated and set aside, with the promise inducing persons to deal with agencies of the State, upon condition that their debt is to be paid out of these particular funds. Under the statutes considered in these cases, there was no segregation of the State Dispensary money and no separation of this fund from the general funds of the

State, nor can there be found in such statutes under any reasonable construction a promise on the part of the State to pay persons selling goods to the State Dispensary out of any particular fund. There was, in other words, in these cases no application of the funds and no inducing promise to pay the creditors out of such a fund, which is the essential distinction that we have attempted to show exists in our case.

STEVENSON CONTRACT.

In addition to the contract arising from the dealings of plaintiff with the County Dispensaries under the Act of 1907, we submit that the interchange of letters between the attorney for plaintiff in error and the attorney for the defendants (R., pp. 4-5, 9) establishes a binding contract protecting the plaintiff in error as to the funds becoming due to it after November 20th, 1909. Under the findings of the Master, hereinbefore referred to, the Court will see that there was a definite contract as to the moneys to become due to plaintiff in error after November 20th, 1909, but there was no definite agreement as to the withdrawal of the moneys then due for prior shipments. (R., p. 54.) The record shows that the counsel for plaintiff in error were referred by the Governor and the Attorney General to Mr. Stevenson as the party having this matter in charge (R., p. 54), and in this way the authority of Mr. Stevenson to bind the defendants, as well as the State, by his agreement, is beyond question. We submit that the State, having become a party to this special contract and the plaintiff in error having acted in good faith upon it, the State, as well as defendants, is bound by it.

No. 570.

OCTOBER TERM, 1914.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
WILLIAM J. MURRAY, JOHN MCSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

No. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,
vs.
WILLIAM J. MURRAY, JOHN MCSWEEN, ADOL-
PHUS N. WOOD, AVERY PATTON AND
JAMES S. BRICE.

IN ERROR TO UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FOURTH CIRCUIT.

STATEMENT OF THE CASE.

In December, 1911, the plaintiff in error brought suit in the District Court of the United States for the Eastern District of South Carolina against the individual defendants who constituted the State Dispensary Commission. The complaint alleged that the defendants constituted the State Dispensary Commission and that the plaintiff had sold certain goods to the County Dispensary Boards, under the Act of 1907 (R., pp. 1-2), and that such County Dispensary

Boards were indebted to plaintiff in error in the aggregate sum of \$12,084.38, "all of which claims had been duly audited and approved by the said Dispensary Auditor for the State of South Carolina, and the said several County Dispensary Boards held the funds appropriated and ready to pay over to this plaintiff in satisfaction of said several balances." (R., p. 3.)

The complaint then proceeded to allege the dealings between the plaintiff and the old State Dispensary, which have been stated at length, the organization of the State Dispensary Commission, under the Acts of 1907 and 1908, and the alleged overjudgment of said Commission of November 17th, 1909. (R., pp. 3-4.) The complaint then alleged that the alleged over-judgment was absolutely null and void. (R., p. 4.) That plaintiff had been selling bottles to the County Dispensaries, and on November 20th, had orders for the prompt shipment of such bottles to the County Dispensaries for Richland, Aiken and other Counties, and that, fearing to make such shipments, because plaintiff had been informed that the State Dispensary Commission intended to hold up the moneys to be due it therefrom, the plaintiff in error entered into the agreement with the State, through its agent, Mr. W. F. Stevenson, represented by the letter of Mr. Stevenson, dated November 20th (R., pp. 4-5) ; that in pursuance of this agreement and relying implicitly thereon, the plaintiff continued to ship goods to the several County Dispensaries until the 26th day of February, 1910, when such Dispensaries were indebted to plaintiff for goods shipped after November 20th in the aggregate sum of \$6,355.92, which sum is included in the aggregate sum of \$19,084.38, already alleged. That the defendants, undertaking to proceed under Section 6 of the Act of 1910, demanded from the County Dispensary Boards of the Counties of Clarendon, Richland and Georgetown the sums of money due plaintiff, as alleged, amounting to \$19,084.38, "and unlawfully and wrongfully received the said sums of money from said several County Dispensary Boards, claiming that they were entitled to the

same on account of the above mentioned illegal offset found by said State Dispensary Commission to be due by this plaintiff as aforesaid; which action this plaintiff alleges was wholly without authority of law, as the provisions of said section 6 of the Act of February 23rd, 1910, were unconstitutional, null and void, as constituting an effort, unwarrantably and without authority, to confiscate the property of this plaintiff without due process of law, the provisions of said section being in violation of section 10 of Article I of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution of the United States; and, furthermore, in violation of the express contract and agreement entered into by this plaintiff with the defendants above named as above alleged." (R., p. 6.)

The defendants duly filed their joint and several answer and later filed a supplemental answer. (R., pp. 8-15.) Upon the call of the case for trial, the defendants duly presented their demurrer to the complaint notice of which had been properly given under the South Carolina practice. (R., p. 17.) The Court stated that it would hear the whole case before determining the demurrer and decide all of the issues at one time, and thereupon, a stipulation was duly filed, waiving a trial by jury and the evidence was taken.

The District Court found the facts and stated them at length in its opinion, but after reviewing the entire case, the Court sustained the demurrer and entered judgment dismissing the complaint upon this ground. (R., p. 26.) We deem it necessary to call attention only to certain facts found by the District Court. That Court found that on the 23d day of February, 1910, the County Dispensaries owed to the plaintiff in error \$4,963.13. The Court then proceeded:

"Subsequent to 23d February, 1910, and between that date and 13th December, 1910, the plaintiff delivered to the County Dispensary Board for Rich-

land County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which, added to the \$4,963.13 due on 23rd of February, 1910, made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

"On that day, viz., 13 of December, 1910, the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State Dispensary Commission under the circumstances stated in the receipt given for the same, viz.:

" 'Columbia, S. C., December 13th, 1910.

" 'Received from the Richland County Dispensary Board the sum of seventeen thousand five hundred and fifty 07-100 dollars (\$17,550.07), being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Company, which amount is paid to the State Dispensary Commission upon its demand made in pursuance to the provisions of the Act of the General Assembly, entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February, 1910, and in pursuance of the judgment of the Supreme Court in the case of the *Carolina Glass Company vs. Dr. W. J. Murray et al.*

" 'STATE DISPENSARY COMMISSION,

" 'By W. J. Murray, Chairman.

" '\$17,550.07.'

"On 22 of November, 1910, (after the filing of the opinion of the Supreme Court of South Carolina in *Glass Co. vs. State of S. C.*), the plaintiff in this case gave the defendants personally notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

"On receiving this amount of \$17,550.07, the defendants held it until 27 of March, 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants, who had ceased to be such." (R., p. 20.)

MANNER IN WHICH ISSUES ARISE.

The District Court then held that the action was one against the State of South Carolina because the plaintiff had no interest in, lien upon or title to the specific fund of \$17,550.07, so as to give it a definite vested right therein, which was protected by the Federal Constitution, but that, on the contrary, such fund belonged to the State, and since plaintiff was only a creditor of the State, that the State was a necessary party to any judicial proceedings attempting to subject this fund to a judgment. The Court further held that there was an essential difference between the sum of \$4,963.13, due on the 23rd of February, 1910 (when the Act of 1910 was passed), and the sum of \$12,586.64, which became due after the Act of 1910 had been passed, and that as to this latter sum the rights accrued subsequent to the passage of the Act and could not have been divested or impaired by it or taken without due process of law. Upon these findings, we specifically assign and rely upon as error, the failure of the Court to hold as follows:

SPECIFICATIONS OF ERRORS RELIED UPON.

SPECIFICATION FIRST.

That the plaintiff had a specific vested interest in the funds due it by the County Dispensaries, both before and after February 23rd, 1910.

SPECIFICATION SECOND.

That the Court should have held that the suit was one brought against the defendants, who, claiming to act as officers of the State and under color of unconstitutional statutes, committed acts of wrong and injury to the rights and property of the plaintiff acquired under contracts with the State, and was to request money from such defendants unlawfully taken by them from plaintiff, on behalf of the State, or for compensation in damages, and, therefore, was not a suit against the State nor one to which the State was a necessary party.

SPECIFICATION THIRD.

That the Court should have held that the plaintiff had vested interests and rights in and connected with the money becoming due after February 23rd, 1910, as well as that which had become due before that date, which rights and interests were protected by the Constitution of the United States.

No. 569.

On the writ of error taking this case to the Circuit Court of Appeals for the Fourth Circuit, that Court affirmed the judgment of the District Court in dismissing the complaint upon the ground that the suit was one against the State, and, therefore, could not be maintained under the Eleventh Amendment to the Federal Constitution. As we later point out in our argument, as to the jurisdiction of this Court, the case is one which should have been brought direct to this Court upon writ of error, and, therefore, the judgment of the Circuit Court of Appeals is a nullity, because it was without jurisdiction, the jurisdiction of this Court being exclusive; but, irrespective of this, we advance the same reasons why the judgment of that Court is erroneous, and should this Court decide that it can review that judgment, we ask it to consider the same specifications of error relied upon here as applicable to the judgment of that Court—because, in any event, as we shall later show,

the case is one that plaintiff in error is entitled to have reviewed by this Court.

AUTHORITIES CITED.

U. S. vs. Lee, 106 U. S., 196, 27 L. Ed., 179.

Poindexter vs. Greenhow, 114 U. S., 207, 29 L. Ed., 192.

Ex Parte Tyler, 149 U. S., 190, 37 L. Ed., 698.

ARGUMENT.

SPECIFICATION FIRST.

Under our argument of "Specification Second" in No. 70 preceding, we have discussed the situation at length in the effort to show that under the Act of 1907, the dealings between plaintiff in error and the County Dispensary Boards gave plaintiff in error vested contract and property rights within the protection of the Federal Constitution. This constitutes the "interest in, lien upon or title to the specific fund" which the District Court failed to find.

We would, however, call particular attention to the receipt given by the State Dispensary Commission to the Richland County Dispensary Board on December 13th, 1910, wherein the Commission admits receiving \$17,550.07, "being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought of the Richland County Dispensary Board from the Carolina Glass Company. . . ." If anything further was needed to complete our argument under No. 70, this practical acknowledgment that the moneys due plaintiff in error had been set aside by the County Dispensary Board under the terms of the Act of 1907, is surely all that is needed. It shows a specific application of these funds for the purpose of discharging the liability of the Dispensary Board which arose

out of the dealings under the Act creating and authorizing such Board. This is a practical acknowledgement of our position that under the Act of 1907, the receipts of the Dispensary Board were pledged for the payment of its debts for goods purchased, thus creating a trust by implication or operation of law in favor of the creditors.

RIGHT TO BRING MANDAMUS.

It appears in this case, as well as No. 70 preceding, that the amounts due plaintiff in error by the County Dispensaries had been audited by the Dispensary Auditor, and there was nothing left for the County Dispensary Board to do but to pay over these amounts. The only discretion vested in the Board may have been a discretion to pay until the Auditor had checked the accounts, but this having been done, we submit that the Board was under a plain ministerial duty to pay the money, and mandamus would lie. This being true, it shows a right in the plaintiff in error, at least a remedy under the contract, of which plaintiff in error was deprived by defendants claiming to act as State officers, by virtue of the void judgment of the Commission of November 17th, 1909, under the void Act of 1910.

SPECIFICATION SECOND.

The proposition here contended for has become so well settled as to require little discussion. *U. S. vs. Lee*, 106 U. S., 196, 27 L. Ed., 179; *Poindexter vs. Greenhow*, 114 U. S., 207, 29 L. Ed., 192; *Ex Parte Tyler*, 149 U. S., 190, 37 L. Ed., 698. If the over-judgment of the Commission of November 17th, 1909, was invalid, as we have attempted to show, and if the Act of 1910 was unconstitutional, as we have attempted to show, then the legal authority which the defendants advance to justify their acts furnish no color of protection, and the defendants were fully responsible to the plaintiff individually.

SPECIFICATION THIRD.

The District Court fell into an error in deciding that there was a difference between the plaintiff's rights in the moneys due on February 23rd, 1910 (the date of the passage of the Act of 1910), and plaintiff's rights in the moneys which became due subsequently. Referring to the Act of 1910 (Appendix H), the Court will immediately see that the only authority it endeavored to confer on the Commission as against the plaintiff in error was based upon the prior over-judgment of the Commission of November 17th, 1909. Section 6 of the Act is the one that endeavors to revive the prior judgment of the Commission and to authorize, by virtue of such revival, the confiscation of moneys then due by the County Dispensaries to plaintiff in error. There had never been any proceedings of any character instituted against plaintiff in error before the Commission, after the judgment of November 17th, 1909.

The statement of the Supreme Court of South Carolina, in its opinion in No. 70, is as follows: "About the same time, notice was served on the plaintiff, pursuant to the provisions of the Act, that the Commission would proceed to pass upon, fix and determine the claim of the State on account of the overcharges growing out of its dealings with the Dispensary" (R. 70, p. 66) is entirely incorrect in fact, and there is nothing in the record to justify such conclusion. In fact, no such notice was ever served on plaintiff in error and no proceedings of any kind were had.

The result is that the only finding or judgment of the Commission which Section 6 of the Act of 1910 attempted to affect was the so-called over-judgment of November 17th, 1909, which even the Supreme Court of South Carolina held to be void, except for the purpose of confiscating the moneys due plaintiff in error. If this judgment was null and void, then plaintiff in error was entitled to deal with the County Dispensaries, even after the Act of 1910, upon the assumption that the moneys due it as a result of such dealings could not be interfered with until there had been some valid finding or judgment against it, and the prop-

erty rights acquired by it could not be confiscated in the absence of some valid judgment, rendered in a proceeding according to due process of law, based on the alleged claims of the State on account of the fraud and deceit of plaintiff in error in the settlement of its claims arising prior to 1906; and we submit that there is no distinction to be made between the moneys due plaintiff prior to February 23rd, 1910, and those due subsequently. A judgment that is void because not obtained according to the requirements of due process of law cannot be subsequently revived or given life by legislative fiat.

JURISDICTION OF THIS COURT.

AUTHORITIES CITED.

- Weston vs. The City Council of Charleston*, 2 Peters, 449, 7 L. Ed., 481.
Upshur Co. vs. Myers, 135 U. S., 467, 34 L. Ed., 196.
Haebler vs. Myers, 132 N. Y., 363, 366, 30 N. E., 963, 28 Am. St. Rep., 589, 15 L. R. A., 588.
Hartman vs. Greenhow, 102 U. S. (12 Otto), 672, 26 L. Ed., 271.
Union and Planters Bank vs. Memphis, 189 U. S., 71, 47 L. Ed., 712.
Loeb vs. Columbia Township, 179 U. S., 472, 45 L. Ed., 280.
American Sugar Refining Company vs. New Orleans, 181 U. S. 277, 45 L. Ed., 859.

No. 85.

(No. 408, October Term, 1913.)

This suit was carried to the Supreme Court of South Carolina under Section 11 of the Act of 1908 (Appendix

G), which provided that any corporation "presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law." There can be no contention to the effect that the Supreme Court is not the highest court of South Carolina, nor can there be any contention that the judgment of such Court in this suit is not a final judgment. Under the construction given to the words "any suit" by this Court in *Weston vs. The City Council of Charleston*, 2 Peters, 449, 7 L. Ed., 481; *Upshur Co. vs. Rich.*, 135 U. S., 467, 24 L. Ed., 196, it is equally clear that this was a suit in the highest court and is properly brought to this Court on writ of error. We submit that this Court, having jurisdiction to reverse, modify or affirm the judgment or decree of the State Court, has ample power and authority to grant the prayer for reversal in this case, and that a judgment should be entered in favor of plaintiff in error reversing the judgment of the Supreme Court of South Carolina in so far as it affirms the so-called over-judgment of the Commission of November 17th, 1909, and this Court should adjudge the validity of plaintiff's claim for \$23,013.75.

If the contention be advanced that this money has gone into the Treasury of the State and has been used for the benefit of the State, and if it be urged that for this reason the judgment of this Court cannot correct the injustice done plaintiff in error, the answer to such a proposition is equally apparent. The State being a party must respond to the judgment of this Court, and, if such a thing is necessary, this Court, as an incident to its appellate jurisdiction, has the right to order restitution. *Haebler vs. Myers*, 132 N. Y., 363, 366, 30 N. E., 963, 28 Am. St. Rep., 589, 15 L. R. A., 588.

No. 70.

(No. 391, October Term, 1913.)

This suit was originated in the Supreme Court of South Carolina under Section 4 of Article V of the Constitution

of 1895, providing that "The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs," and under Section 11 of the Code of Civil Procedure of South Carolina, 1902, which contains an identical provision. The mere fact that the suit was instituted in the original jurisdiction of the Supreme Court does not make it any the less a suit within the meaning of Section 709. *Hartman vs. Greenhow*, 102 U. S. (12 Otto), 672, 26 L. Ed. 271. We submit, therefore, that the Court has jurisdiction to reverse this judgment, and the fact that, pending the writ of error, the defendants have proceeded to confiscate the money of plaintiff in error, is only a reason why this Court should, as an incident to its judgment of reversal, order the restitution of this property.

NCS. 569 AND 570.

We here rely upon *Union and Planters Bank vs. Memphis*, 189 U. S., 71, 47 L. Ed., 712, to establish our position that the case is one that should have been brought direct to this Court on writ of error to the District Court, and that the Circuit Court of Appeals was without jurisdiction, and, consequently, its judgment a nullity because of the exclusive jurisdiction of this Court—and, further, that the taking of the case on writ of error to the Circuit Court of Appeals does not amount to a waiver of the right to have the case brought here on writ of error. This point is made in No. 569 by assignment of error number three. (R., p. 11).

Section 5 of the judiciary Act of March 3rd, 1891, provides that writs of error may be taken from a District Court direct to this Court: (Subdivision 1) "In any case in which the jurisdiction of the Court is in issue;" (Subdivision 4) "In any case that involves the construction or application of the Constitution of the United States," and (Subdivision 6) "In any case in which the

Constitution or law of a State is claimed to be in contravention of the Constitution of the United States." The jurisdiction of the District Court was originally invoked upon the ground that the construction or application of the Constitution of the United States was involved and the further ground that the Acts of 1907, 1908 and 1910, and the authority exercised by defendants under such Acts, was in contravention of the Constitution of the United States, thus coming clearly within subdivisions four and six of Section 5. There was no diversity of citizenship in the case.

It is true that if the District Court first acquired jurisdiction upon the grounds of diversity of citizenship and the Federal question afterwards comes into the case, say by way of answer, then the case is one which could be brought either direct to this Court or could be carried to the Circuit Court of Appeals. If the latter course were pursued, the Circuit Court of Appeals would have jurisdiction under Section 6 of the Act of 1891 and its judgment would be final, although it might certify the constitutional or federal question to this Court.

In a case, however, in which the jurisdiction of the District Court is first invoked upon a Federal question, that is, where it appears on the record from plaintiff's own statement in legal and logical form by good pleading, that the case is one which really and substantially claims that the Constitution or laws of the State are in contravention of the Constitution of the United States, or really and substantially involves the construction or application of the Constitution of the United States, then the case must be brought direct to this Court under Section 5, and the appellate jurisdiction of this Court is exclusive. *Loeb vs. Columbia Township*, 179 U. S., 472, 45 L. Ed., 280; *American Sugar Refining Company vs. New Orleans*, 181 U. S., 277, 45 L. Ed., 859; *Union and Planters Bank vs. Memphis*, 189 U. S., 71, 47 L. Ed., 712. The case last above cited is

exactly similar to ours, and we have followed the procedure approved by the Court in that case.

Respectfully submitted,
J-B. S. LYLES,
Attorney for Plaintiff in Error.

APPENDIX.

STATUTES AND RESOLUTIONS OF SOUTH CAROLINA RELEVANT TO THE QUESTION HERE PRESENTED.

A.

23 STATS. OF S. C., PAGE 436.

ACT OF 1900 AMENDING STATE DISPENSARY LAW. (Title Omitted.)

Section 1 provides that the Acts of 1896 and 1897 "be amended as hereinafter set forth."

Section 2. That the State Board of Control is hereby abolished.

Section 3. A Board consisting of three members, to be known as the Board of Directors of the State Dispensary, is hereby established, whose duties and powers shall be hereinafter defined. The members of said Board shall be men of good moral character, not addicted to the use of intoxicating liquors as a beverage, and shall be elected by the General Assembly in joint session as follows: The Chairman of the Board shall be first elected, and then shall be elected the two remaining members. The term of office of the members of said Board shall be for two years, unless sooner removed by the Governor; they shall qualify and be commissioned in the same manner as other State officers. In the event of a vacancy on said Board by death, resignation or otherwise, such vacancy shall be filled by appoint-

ment by the Governor, until the next session of the General Assembly, when an election shall be held to fill said vacancy for the unexpired term. Each member of the said Board shall receive for his services the same per diem and mileage allowed to members of the General Assembly: *Provided*, That no member shall receive per diem for more than one hundred days in any fiscal year. The said Board shall devise such a system of bookkeeping and accounting as it may deem advisable. The said Board shall prescribe all rules and regulations, not inconsistent with law, for the government of the State Dispensary and the County Dispensaries. The General Assembly shall, at the present session, upon the approval of this Act, elect the members of said Board, as provided for in this section: *Provided*, That no member of this Board of Directors, while holding this office, shall become a candidate for any other office.

Section 4. A Dispensary Commissioner shall be elected by the General Assembly, who shall hold his office for the term of two years, and until his successor shall be elected and qualified, and who shall receive an annual salary of three thousand dollars, to be paid as now provided by law. The Governor shall have the right at any time to suspend the said Commissioner for any cause which he shall consider sufficient until the next meeting of the General Assembly, and appoint some suitable person to fill such vacancy during said suspension. In case of the removal of said Commissioner by the Governor, he shall, on the first day of the next meeting of the Legislature, make a report to said General Assembly, stating his reason for his action, which action, if approved by the General Assembly, shall operate as a removal, and the General Assembly shall elect a successor to said Commissioner. In case of death, suspension or other disability of the Commissioner, the Governor shall have the right to appoint a successor to fill said vacancy until the next meeting of the General Assembly. Said Directors of the Dispensary, shall, within thirty days after the approval of this Act by the Governor, and there-

after quarterly, advertise in two or more daily newspapers of this State, and one or more daily newspapers published without this State, for bids to be made by parties desiring to furnish liquor to the Dispensary for said quarter. Said bids shall be placed in an envelope, securely sealed with the seal of the company, firm or corporation, and having been so sealed, shall be placed in the express office, directed to the State Treasurer, Columbia, S. C., and only one bid shall be made by any one, which shall state the quality, price and chemical analysis thereof, and accompanying said bids there shall be a sample of each kind of liquor offered for sale, containing not more than one-half pint each, which sample shall, on its arrival, be delivered to the Dispensary Commissioner, to be retained by him until after it has been ascertained that the wines or liquors purchased correspond in all respects with that purchased; said samples to be the property of the State. Said bids shall be kept by the State Treasurer in his office, and he shall not himself, or allow any one to inspect said bids, or the envelopes containing said bids, but shall deliver said bids to the Directors of the Dispensary, at a meeting of the Board of Directors, who shall open said bids in public, and record all said bids in a book kept for that purpose. Said Directors of the Dispensary may reject any and all bids, and readvertise for other bids. Said Directors of the Dispensary shall purchase all alcoholic liquors for lawful use in this State, and shall have the same tested and declared to be chemically pure; and if the wines and liquors purchased fail to correspond in any respect with the samples furnished, the seller thereof shall forfeit to the State a sum not exceeding the value of said liquor, to be recovered in an action brought by the State against such seller; and said contract shall be awarded to the lowest responsible bidder, for such quantities and kinds of liquors as may be deemed necessary to the Dispensary for the quarter, and said contracts shall further provide that the Directors of the Dispensary may order additional quantities of liquors sufficient to supply the Dispensary, should there be need of

more, from the same persons or corporations, at the same price, for that quarter. Said Directors shall require from the successful bidder or bidders such bond, in such sum as they may deem necessary, to insure the compliance of said bidder or bidders with the terms of said contract: *Provided*, That the said Directors of the Dispensary shall not purchase any liquor of any person, firm or corporation, who shall solicit any orders, either by drummer, agents, samples or otherwise, except as hereinbefore provided. The fiscal year of the transactions of the State Dispensary shall end on the 30th day of November of each year. The Governor of the State shall appoint, not later than the 15th day of December in each year, two (2) expert accountants, of good character and of high standing in their profession, who shall make a thorough examination of the books of account, trial balances and balance sheet of the Dispensary for the year ending November 30th, together with all bills, vouchers and any and all evidences of receipt and expenditures whatsoever, and they shall certify to the General Assembly, in writing, at the beginning of the regular session in January of each year, the result of such examination. This certificate to be in addition to the annual report of the Board of Directors. The accountants so named by the Governor of the State each shall receive for his services (\$4) four dollars per day, for not exceeding thirty days in any one year, to be paid from the earnings of the Dispensary. The Commissioner and the members of the Board of Directors are hereby directed and commanded to give to the accountants appointed by the Governor free and full access to all books of accounts, trial balances, balance sheets, and every and all books, invoices, receipts, bank books, and every and all papers connected with the financial operations of the Dispensary: *Provided, further*, That nothing herein contained shall prevent said Directors of the Dispensary from making with distillers in this State contracts for the purchase of liquors manufactured by them within the State.

Sec. 5. The Dispensary Commissioner shall, before entering upon the duties of his office, execute a bond to the State of South Carolina in the sum of seventy-five thousand dollars, which bond shall be approved by the Attorney General of the State, according to the provisions of the law as now provided, or which may be hereinafter enacted, and for the faithful observance of all rules and regulations made and adopted by the Directors of the Dispensary during his term of office; said Commissioner shall be charged with the management and control of the State Dispensary, subject to the rules and regulations of said Directors of the Dispensary and the provisions of the Dispensary Law; said Commissioner shall enter into contracts, employ all assistants and help necessary to manage the State Dispensary, at salaries not to exceed those fixed by the Directors of the Dispensary; said Commissioner may discharge any of the employees at pleasure, and report his reasons therefor in writing to the Directors of the Dispensary: *Provided*, That said Dispensary Commissioner shall not employ any person who is related to him or any member of the Directors of the Dispensary by blood or marriage within the sixth degree: *Provided, further*, That the liquor sold to the County Dispensary shall be sold at a profit of not over ten per cent. of the cost to the State.

Sec. 9. The State Board of Control, shall, within ten days after the approval of this Act, on demand, deliver to the said Directors of the Dispensary, all books, accounts and property, of every nature and kind whatsoever.

Sec. 12. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 13th day of February, A. D. 1900.

B.**RESOLUTION OF 1905 TO INVESTIGATE DISPENSARY.**

24 STATUTES OF S. C., PAGE 1220.

**A CONCURRENT RESOLUTION
To Investigate the State Dispensary.**

Be it Resolved by the Senate, the House of Representatives concurring:

Section 1. That a Joint Committee, consisting of three Senators and four Members of the House of Representatives, be appointed by the presiding officers of the respective Houses to investigate the affairs of the State Dispensary.

Sec. 2. That said Committee be, and is hereby, empowered to send for papers and persons, to swear witnesses, to require the attendance of any parties whose presence shall be deemed necessary, to appoint an expert accountant and stenographer, and to investigate all transactions concerning said Dispensary and its management, and to make testimony either within or without the State, and shall have access at all times during their service to all the books and vouchers and other papers of said institution, especially in investigating the following facts:

(a) Whether or not it is a fact that houses represented by agents who are near relatives of the members of the Board of Directors, receive large orders at each purchase.

(b) Is it a fact that members of the Board of Directors are, or have been, agents for certain wholesale houses from which large purchases are made?

(c) Is it a fact that parties to whom large orders are given are not wholesale dealers, but brokers, and that the orders are filled by third persons, thus making the State pay the commissions of the middleman?

(d) Was it necessary to purchase the large quantity of liquors ordered in December, 1904, to fill demands, and

especially the new and fancy goods purchased, which is unknown to the trade?

(e) Are the extraordinary heavy purchases made necessary to the best business interest of the Dispensary system?

(f) What is the financial standing of the business, and is it run on the best principles for the interest of the law as originally passed and amended?

(g) Is it a fact that the State, through the Dispensaries, is violating the Constitution of 1895, in that it is selling whiskey in less quantities than one-half of one pint?

(h) Is it a fact that the State is selling 5's in case goods to its customers and charging them for one quart?

(i) Is it a fact that certain agents are traveling over the State and offering special inducements to County Dispensers to "push" certain brands of liquors, and if so, is it a fact known to the members of the State Board of Directors?

(j) Is it a fact that certain requirements of the law are dispensed with by the County Dispensers by order of, or by the consent of, the members of the State Board of Directors?

(k) Has the whiskey which has been recently purchased been ordered out from the dealer, or is it held in reserve for future delivery?

(l) What is the indebtedness of the Dispensary for liquors which have been bought but not delivered?

(m) And any and all other matters relating to the management of the State Dispensary, and of any official or person in relation thereto.

(n) Is it, or not, a fact that excessive freights have been paid to railroads for transporting liquors into the State, when said liquors could have been shipped into the State by water at less cost to the State?

(nn) Whether there is any warrant of law or authority for the establishment and conduct of what is commonly known as "beer dispensaries," as they are now and have been conducted?

Sec. 3. That said Committee may at any time they may deem it advisable call to their assistance any of the State officers or employees of the State Dispensary, whose duty it shall be to render the said Committee any reasonable service that may be required of them within the scope of its functions as prescribed by these Resolutions.

Sec. 4. That the said Committee shall convene as soon after the adjournment of this session of the General Assembly as practical, and shall organize by electing one of their number as Chairman, and shall report its findings to the next session of the General Assembly. That said Committee shall receive the same per diem and mileage as members of the General Assembly, and that the sessions of said Committee be open to the public.

Sec. 5. That nothing herein contained shall be construed to deny the same Committee power to apply at any time to the General Assembly for such other power and authority as the circumstances arising during this investigation may seem to require.

Sec. 6. That said Committee shall have the right to punish for contempt as Courts of Common Pleas and General Sessions.

Sec. 7. That said Committee shall have a Marshal to serve its processes and keep order at its sessions, and his pay shall be fixed by said Committee. The pay of the witnesses shall be the same as that of witnesses in the Court of Common Pleas for Richland County, and all expenses shall be paid on the warrant of the Chairman of said Committee by the Liquor Commissioner out of the general Dispensary fund and charged as Dispensary expenses.

Sec. 8. That said Committee be, and is hereby, empowered to send for papers and persons, to swear witnesses, to require the attendance of any parties whose presence shall be deemed necessary, to employ expert accountants and stenographers and any other person or persons the Committee may consider necessary in the ascertainment of any fact or facts pertinent to this inquiry; and said Committee is hereby authorized and empowered to investigate and in-

quire into all transactions connected with said State Dispensary and its management or control at any time in the present or past, and to investigate any and all purchases, sales, shipments, contracts, or other like transactions; and the personal connection, if any, of any member or members of the State Board of Control, or the State Liquor Commissioner, or any other citizen or official of this State, in the present or past, with any corporation, concern or individual contracting with or supplying any spirituous or intoxicating liquors, or other goods or commodities to said Board or Commissioner, or to the State, to take testimony either within or without the State; and to have access to all the books and vouchers and other papers of said institution or of any officer or employee thereof.

Sec. 9. That the costs and expenses of this investigation be paid by the State Dispensary, each member of said Commission to receive \$4.00 per day and the usual mileage.

C.

ACT OF 1906 IN RE DISPENSARY INVESTIGATING COMMITTEE.

24 STATUTES OF SOUTH CAROLINA, PAGE 334.

AN ACT TO PROVIDE FOR THE INVESTIGATION OF THE DISPENSARY.

Whereas, a Committee has been appointed to investigate the State Dispensary under the Concurrent Resolution of the General Assembly, dated the 31st day of January, 1905; and whereas, in the progress of the work of the said Committee some doubt has arisen as to the power of said Committee in the discharge of their duties; and it being provided in Section 5 of said Concurrent Resolution that the said Committee should apply to the General Assembly for such other power and authority as the circumstances arising during this investigation may seem to require; therefore,

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the Committee heretofore appointed under the terms of the Concurrent Resolution, dated the 31st day of January, 1905, or any other Committee or Committees that may be appointed, are hereby authorized and empowered to elect a Marshal, who, upon being sworn, shall be and become a peace officer of the State and invested with all the power of Sheriffs and Constables in the service of any and all process issued by the Committee aforesaid, and with the power to arrest and imprison upon the order of the said Committee any and all persons who shall fail and refuse to obey any legal order of the said Committee, and who shall be guilty of any disorderly conduct in the presence of said Committee during any session thereof, or who shall be guilty of any contempt of the said Committee.

Sec. 2. The said Committee be, and are hereby, authorized and empowered to call before them by summons or notice, in such form as the Committee may adopt, and to be served by the Marshal of said Committee, or such other officer of the State as may be by the Committee required, such person or persons as the Committee deem proper, and to require such person or persons to answer, upon oath, any and all questions that the Committee may deem relevant and may propound him or them; and upon the failure or refusal of such person or persons to obey such summons or notice, or to answer such question or questions, such person or persons shall be deemed to be in contempt of the authority of said Committee, and may be imprisoned upon the order of the said Committee in the common jail, to be there held until he or they shall comply with the order of the said Committee: *Provided*, That no testimony given by said witness shall be used against them in a criminal prosecution.

Sec. 3. The said Committee be, and the same is hereby, authorized to send for and to require the production of any and all books, papers, or other documents or writings which may be deemed relevant to any investigation, and to

require said person or persons in custody or possession of said papers to produce the same before the said Committee, and any person or persons who shall fail or refuse to act on the order or notice of said Committee to produce said books, papers, or other documents, or writings, shall be deemed guilty of contempt of said Committee and shall be punished as provided in Section 2.

Sec. 4. Said Committee shall have power to administer necessary oaths, and any person who shall, after being sworn before said Committee, swear falsely, shall be deemed guilty of perjury, and, upon conviction, shall be punished as provided by law.

Sec. 5. That said Committee be, and they are hereby, authorized and directed to order the Commissioner of the State Dispensary to withhold the payment of any claims against the State Dispensary or any officer thereof, or the claims of any creditor against said State Dispensary or any of its officers, which they may deem advisable, until same is duly approved by the production of the books of original entry, and all documents and correspondence relating to all their transactions with the State Dispensary, and to require the person or persons in custody or possession of said books, documents, papers and correspondence to produce the same before the said Committee in person, and when such proof had been submitted to and approved by the said Committee, and the State Treasurer is hereby forbidden to pay such claims upon written notice from the Chairman of said Committee.

Sec. 6. This Act shall take effect and be of force immediately upon its approval by the Governor.

Approved the 24th day of January, A. D. 1906.

D.**RESOLUTION OF 1906 CANCELLING CONTRACTS
WITH CAROLINA GLASS COMPANY.**

"Be it Resolved, by the House of Representatives, the Senate concurring :

"Section 1. That the State Board of Directors of the State Dispensary be, and it is hereby, required to withdraw from the Carolina Glass Company, all orders, contracts and awards for glass now outstanding, except so much as may be necessary for not more than sixty days' use, and that bids be reopened, advertisements made and notices sent to all glass dealers, heretofore doing business with the Dispensary, and to all other known glass dealers or glass manufacturers setting forth the amount, kind and quality of glass to be bought or bid upon; that such bidding and awards thereupon shall be had quarterly and purchases shall be made for only one quarter at a time, and shall be conducted, as far as may be practicable, as is now or may hereafter be provided by law for the purchase of liquors and wines.

"Section 2. That the Dispensary Investigating Committee be required to employ an expert accountant or accountants to check up the accounts with the Carolina Glass Company, and that such other person or persons be employed as may be necessary to aid in checking up said accounts and examining said contracts and orders.

"The Concurrent Resolution was agreed to and was ordered sent to the Senate."

E.

ACT OF 1907.—COUNTY DISPENSARIES ESTABLISHED AND STATE DISPENSARY ABOLISHED.

25 STATUTES OF SOUTH CAROLINA, PAGE 463.

AN ACT TO DECLARE THE LAW IN REFERENCE TO AND REGULATE THE MANUFACTURE, SALE, USE, CONSUMPTION, POSSESSION, TRANSPORTATION AND DISPOSITION OF ALCOHOLIC LIQUORS AND BEVERAGES WITHIN THE STATE, AND TO POLICE THE SAME.

Section 1 forbids the manufacture, sale, etc., of all alcoholic liquors and beverages under a penalty of imprisonment or fine; "except in incorporated cities or towns of this State, in Counties wherein the same may be permitted as hereinafter provided."

Section 2 provides for the determination by a special election in each County of the question whether liquors and beverages may be sold in any County, and also of "the question whether one-third of the license fees and Dispensary profits, as hereinafter provided for, shall be paid to the County Treasurer, to be applied to the County school fund or to roads and bridges. Such election to be ordered by the County Supervisor of such County upon the filing with him of a petition signed by one-fourth of the qualified electors of the County, the election to be conducted according to certain regulations specified.

Section 3 prescribes the manner in which the ballots are to be taken and the election determined.

Section 4. If a majority of the ballots cast in such election be "For Sale," it shall be lawful for such liquors and beverages to be sold in said County as hereinafter provided until the result of such election be reversed by a subsequent election.

Section 5. If the sale of alcoholic liquors and beverages be authorized by such election, the Governor, upon recom-

mendation of the County Board of Education of such County, if the result of the election as to application of profits be in favor of County School Fund, or the County Board of Commissioners, if such result be in favor of Roads and Bridges, the Mayor or Intendant of the city or town within which a Dispensary may be located, and the Senator and Members of the House of Representatives of such County shall appoint three qualified electors of the County, who shall be known as "County Dispensary Board," and whose term of office shall be two years, subject to removal by the Governor for cause. One member of the Board shall be recommended by each of the bodies above named, which shall also have the power to fill any vacancy, a majority thereof in each instance controlling. If there be more than one city or town in such County within which a Dispensary may be located, then, and in such case, a majority of the Mayors or Intendants of such cities and towns shall control in their recommendation; and if there should be a failure on their part for any reason to agree, then the appointment of the member to be recommended by them shall be made by the delegation: *Provided*, That in the Counties of Dorchester, Berkeley, Fairfield, Orangeburg, Union, Newberry, Kershaw, Lee, Marion, Lexington, Barnwell, Marlboro, Sumter and Oconee, said Board shall be appointed upon the recommendation of the Members of the General Assembly from said Counties, or a majority of the respective delegation; except in the County of Abbeville, where one member shall be recommended by the City Council of Abbeville and two by the delegation in the General Assembly; in the County of Aiken, where one member shall be recommended by the City Council of Aiken and two members by the delegation in the General Assembly; in the County of Chesterfield, where one member shall be recommended by the County Treasurer, the County Superintendent of Education and the County Supervisor, one member by the Town Council of the Town of Cheraw, and one member by the delegation in the General Assembly; in the County of Georgetown, where one mem-

ber shall be recommended by the City Council of Georgetown, one member by the County Board of Education and one member by the delegation in the General Assembly; in the County of Lancaster, where one member shall be recommended by the Town Council of Lancaster and two members by the delegation in the General Assembly. Each member of the Board shall, before entering upon his duties, enter into a good and sufficient bond in the sum of five thousand dollars with a surety company, the fee therefor to be paid out of the profits of the Dispensary, in the form prescribed by Section 584, Vol. I, Code of Laws, 1902. The Board shall organize by the election of a Chairman and a Secretary from among their number. Each member of the Board, for his services, shall receive three dollars per day, for not exceeding ten days in each month, and mileage, five cents per mile each way, traveling in the most direct route. Said Board shall have the power, and is hereby required, to make, from time to time, rules and regulations for the government of any Dispensary under its control. The said Board is hereby authorized and required to establish a Dispensary or Dispensaries, as said Board may deem proper, for the sale of alcoholic liquors and beverages as herein provided, and may close any Dispensary so established, except the Dispensary located at the County seat, when in their judgment the public good requires it: *Provided*, That in the County of Abbeville no Dispensary shall ever be located outside the City of Abbeville. The said Board shall elect a Dispenser for each Dispensary, who shall have charge of same, under the supervision of said Board; and who shall hold his position for twelve months, unless removed by the Board in the exercise of its discretion. The said Board may employ such clerks and assistants as may, in their judgment, be necessary, and pay them, including the Dispenser, such salary as the said Board may fix: *Provided*, No salary or compensation shall be regulated or be made dependent upon the amount of sales. Said Dispenser shall give bond in the sum of five thousand dollars in the form prescribed by Section 584, Vol. I, Code of Laws, 1902:

Provided, Said bond shall be given in a surety company, or such personal bond as the law now allows.

Section 6. The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: *Provided*, That the State shall not be liable upon any contract for the purchase thereof beyond actual assets of the Dispensary for which the purchase is made. The members of the County Dispensary Board and all Dispensers shall be persons of known moral character and not directly or indirectly applicants for appointment.

Section 7. The said Board shall advertise in two or more daily papers in this State, and one weekly paper of the County, for bids to supply the kinds and quantities of liquor and beer to be bought. Such bids shall be only for the liquor and beer to be furnished during the three months following, and the kinds and quantities shall be designated. The bids shall be sealed and there shall be no sign or mark upon the envelopes indicating the name of the bidder. All bids must be sent by express or by registered mail to the County Treasurer within thirty days after the first advertisement therefor. The County Treasurer shall keep such bids without inspection or permitting inspection of the same until the expiration of said thirty days, when they shall be opened in public by said Board and the contract awarded to the lowest responsible bidder of each kind, the Board reserving the right to reject any bid: *Provided*, No bid shall be opened until at least one week's notice of the time and place thereof shall be given in some newspaper published in the County, and said bid shall then be opened. Said award shall be forthwith published once in a newspaper published in the County. Said published statement shall include the grade of goods purchased, quantity of each grade purchased, from whom purchased, price per gallon, or dozen packages, and the retail price at which the same is to be sold: *Provided, however*, No pur-

chases herein mentioned or contemplated shall be made from any person, firm or corporation residing without the limits of this State, having a resident or permanent representative agent or salesman in this State.

Section 8. It shall be the duty of the said Board to cause an analysis of the liquors in stock to be made by some person competent to determine whether any of said liquors are adulterated or impure, to the end that no impure liquors shall be sold by Dispensaries. If, upon analysis, it shall be determined that such liquors are adulterated or impure, the County Dispensary Board may retain the price thereof from the seller, or if they have been paid for, the said Board shall not allow said liquors to be sold, and may, in the name of the State, institute an action against the seller for the recovery of the amount so paid.

Section 9. The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the County during that week.

Section 10. Each Dispenser shall be a qualified elector of this State and a resident of the County in which the Dispensary is located, who has never pleaded guilty or been adjudged guilty of violating any law relating to intoxicating liquors, who is not a keeper of a restaurant or place of public amusement, and is not addicted to the use of intoxicating liquors as a beverage.

Section 11. Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by him from sales.

Section 13. All sales shall be for cash and at a profit to be determined by the Board.

Section 18. On the first days of January, April, July and October in every year, the County Dispensary Board shall file with the Clerk of Court a sworn statement of the

profits of each Dispensary in the County for the three months preceding said dates, respectively, which shall be recorded by him in a book kept for that purpose, and published forthwith by said Board once in a newspaper published within the County. The Board shall file a copy thereof with each of the following officers: The County Treasurer, the County Supervisor, and the County Superintendent of Education, and the Mayor or Intendant of any city or town within which a Dispensary may be located; and upon the said days shall divide the profits into three equal parts—one-third to be paid to the County Treasurer for ordinary County expenses; one-third to be paid to the County Treasurer for County School Fund, or for roads and bridges, as may be determined by the election provided for in Section 3 of this Act, and one-third to the Treasurer of the municipality in which said Dispensary is located for ordinary expenses. . . .

[Here follow certain exceptions covering the division of profits in certain counties.]

Section 34. In any County in this State in which the Dispensary has not been voted out by and under existing law, and until an election is held in such County, as provided in this Act, any Dispensary now established therein shall be continued as a Dispensary in said County under this Act. There shall be appointed by the Governor, as soon after the approval of this Act as practicable, a County Dispensary Board in such County in the same manner as is provided hereinbefore for appointment of such Boards, whose duties and authority shall be the same as hereinbefore provided for such Boards; said Board is authorized to purchase from the proper State authorities the stock on hand, or so much thereof as may be necessary. The profits arising from the operation of such Dispensaries shall be divided as follows: One-third to be paid to the County Treasurer for ordinary County expenses; one-third to the County Treasurer for the County School Fund; and one-third to the Treasurer of the municipality in which said Dispensary is located for ordinary expenses; except that

in the Counties for which special provision is made in Section 18 of this Act for the division of profits they shall be divided as provided therein.

Section 35. In the event that a Dispensary be established under the provisions of this Act in any County, and thereafter an election be held hereunder resulting in the disestablishment of the same, the County Dispensary Board in such County shall immediately close the Dispensary therein, dispose of the stock on hand for cash to some other County Dispensary Board, or to purchasers outside of this State, apply the proceeds thereof, with any other assets, to the payment of outstanding obligations, and divide the net proceeds as hereinbefore provided for Dispensary profits.

Section 39. The office of Dispensary Auditor is hereby created. The Governor shall, immediately upon the approval of this Act, appoint a competent person as Dispensary Auditor, to examine from time to time, as hereinafter provided, into the affairs of all Dispensaries and liquor manufacturing establishments conducted in this State.

Section 40. It shall be the duty of such Dispensary Auditor to make a thorough examination into all the books, papers and affairs of the said Dispensaries and liquor manufacturing establishments, and in making such examinations he shall have authority to administer oaths and to summon and examine all persons connected with the said Dispensaries and liquor manufacturing establishments. He shall make a full and detailed report of his findings and file the same with the State Treasurer and with the Treasurer of the County in which the Dispensary or liquor establishment may be located. Said examination and report of each Dispensary and establishment shall be made at least once every three months.

Section 41. The term of office of the said Dispensary Auditor shall be four years, and he shall receive as com-

pensation two thousand dollars per annum and all actual expenses incurred by him in the discharge of his duties.

Section 42. The said Dispensary Auditor is hereby authorized to prescribe a system of bookkeeping and accounts for the several County Dispensary Boards, and to enforce observance of the same.

Section 43. All accounts for salary and expenses of the Dispensary Auditor shall be submitted to and approved by the Comptroller General, and he shall apportion the same to and assess the same upon the several Dispensaries in the State according to their gross sales, and the same shall be paid by the several County Dispensary Boards to the State Treasurer, to be paid out by him upon the warrants of the Comptroller General.

Section 44. Any person who may obstruct or interfere with said Dispensary Auditor in the performance of his duties, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars, or both, in the discretion of the Court.

Section 45. If any member of the County Dispensary Board, any Dispenser, Clerk or Assistant in their employ, violate any of the provisions of this Act, he shall be deemed guilty of a misdemeanor and shall be removed from office.

Section 47. The State Dispensary is hereby abolished, and all Acts and parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That this Act shall not have the effect of preventing any violations of the present criminal law relating to the Dispensary being punished as now provided by law for offenses heretofore committed.

Section 48. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 16th day of February, A. D. 1907.

F.**ACT OF 1907 IN RE STATE DISPENSARY COMMISSION.**

25 STATUTES OF SOUTH CAROLINA, 835.

**AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY
CONNECTED WITH THE STATE DISPENSARY, AND TO
WIND UP ITS AFFAIRS.**

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby

authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony either within or without this State: *Provided, further,* That all payments shall be made in gold and silver coin of the United States, in United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided,* That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for

the Investigation of the Dispensary, approved 24 January, A. D., 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, 1907.

G.

ACT OF 1908 IN RE STATE DISPENSARY COMMISSION.

25 STATS. S. C., 1289.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY, AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATS HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

(This Act amends the Act of 1907 in various particulars, "so that said Act (of 1907), when so amended, shall read as follows.")

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assem-

bly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due, and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition, upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards; and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5) dollars per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1st, 1909: *Provided, further*, That in addi-

tion to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty dollars (\$150): *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided,* That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission that the real estate heretofore used for the offices and warerooms, etc.,

of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws, South Carolina, Volume I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand dollars (\$75,000), and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland County against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been or may hereafter be collected by said Dispensary Commission: *Provided*, That each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission, shall be paid out for

any purpose, or to any persons whatsoever, except upon the cheque of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such cheques as may be presented by the Chairman of said Commission only upon presentation of the same together with a certificate of said Commission, or a majority thereof, which certificate shall show: that the said cheque is issued in payment of some expense provided for by statute; or, necessarily incident to closing up the affairs of the Dispensary; or, for services rendered said Commission in closing up the affairs of said Dispensary; or, contracted for in accordance with law by said State Dispensary Commission; or, that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due and upon such adjudication ordered paid.

Approved the 24th day of February, A. D. 1908.

H.

ACT OF 1910 FURTHER IN RE STATE DISPENSARY COMMISSION.

26 STATUTES OF S. C., PAGE 876.

AN ACT TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of

all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

Sec. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

Sec. 3. Any finding of the State Dispensary Commission under the provisions of this Act shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any County Dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and each and every County Dispensary Board, and other officer in charge of County Dispensary funds or assets arising from the sale of property belonging to a County Dispensary, or Dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or sums of money whatsoever, turn over to the State Dispensary Commission a sufficient sum of money, or so much as may be on hand, to pay the debts due the State, any balance remaining to be applicable to any just claim of such creditor against a County Dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

Sec. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer or officers in charge or custody of any fund or funds arising from the sale of any assets belonging to any former County Dispensary, or of any assets belonging to any existing County Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

Sec. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document, or witness, or shall refuse to submit to the authority or jurisdiction of

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the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all County Dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: *Provided*, All persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: *Provided, further*, The Attorney General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed to be due by each such person, firm or corporation to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

Sec. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

Sec. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each County where any property of such judgment debtor is situated.

Sec. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the

General Assembly, concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

Sec. 9. In all cases pending before the said State Dispensary Commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any County in this State, the said Commission shall file in the office of the Clerk of the Court in each County where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

Sec. 10. This Act shall take effect immediately upon its approval by the Governor.

Approved the 23d day of February, A. D. 1910.



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JAMES D. MAHER
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Supreme Court of the United States

OCTOBER TERM, 1914

No. 70 9

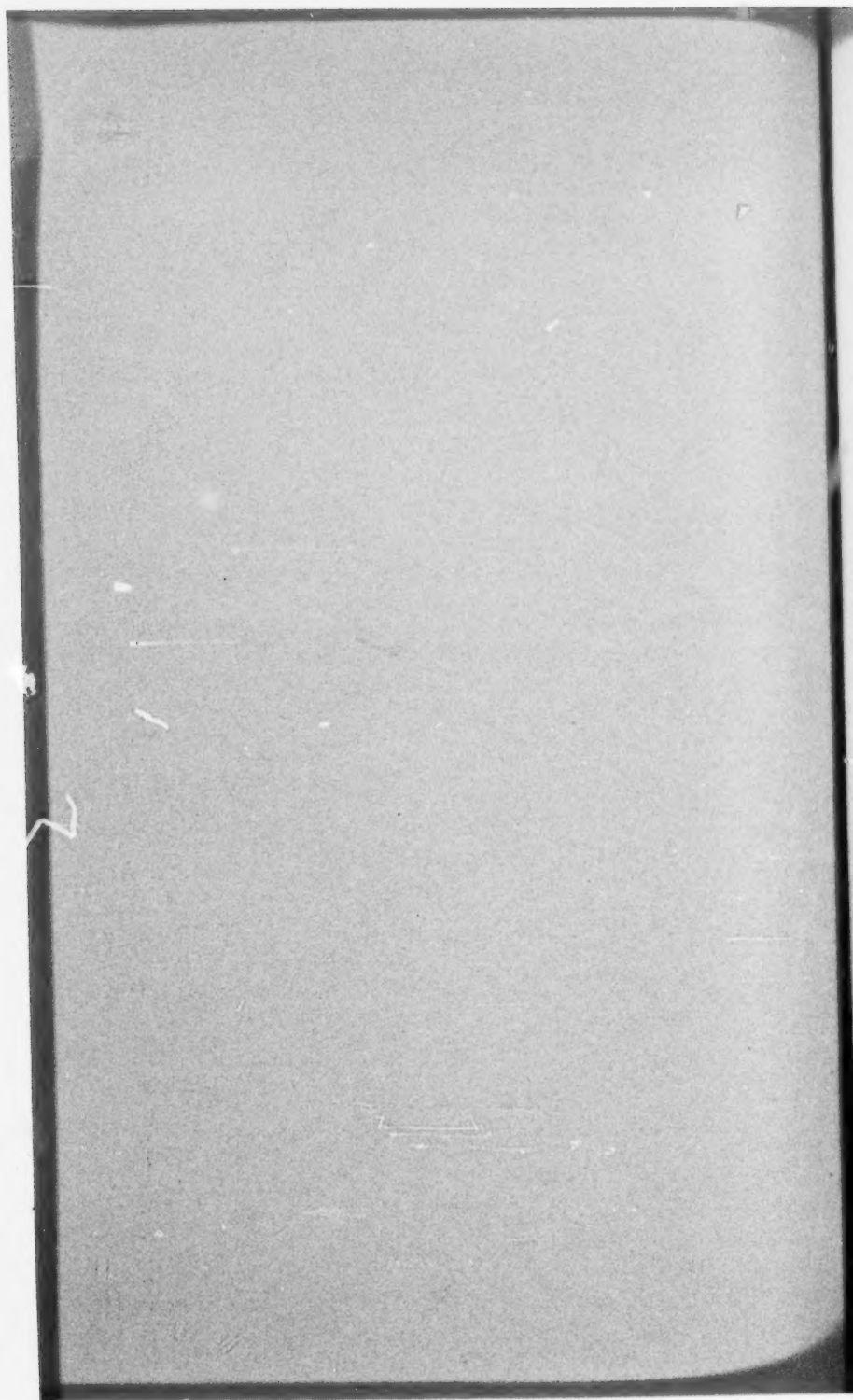
CAROLINA GLASS COMPANY, *Plaintiff in Error,*

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

In Error to the Supreme Court of the State of South Carolina.

ARGUMENT OF THOMAS H. PEEPLES AND BENJAMIN LINDSEY ABNEY,
FOR DEFENDANTS IN ERROR.



Supreme Court of the United States

OCTOBER TERM, 1914

No. 70

CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

In Error to the Supreme Court of the State of South Carolina.

**ARGUMENT OF THOMAS H. PEEPLES AND BENJAMIN LINDSEY ABNEY,
FOR DEFENDANTS IN ERROR.**

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Supreme Court of the United States

OCTOBER TERM, 1914.

No. 70.

THE CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN,
et al., CONSTITUTING THE STATE DISPENSARY
COMMISSION, et al.

Argument of Thomas H. Peebles and Benjamin Lindsey Abney,
for Defendants in Error.

STATEMENT OF CASE.

The defendants in error composed the State Dispensary Commission, created under an Act of the General Assembly of the State of South Carolina, entitled "An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs," approved the 16th day of February, 1907 (XXV Stats., 835). This Act was subsequently amended by an Act entitled "An Act to amend an Act entitled 'An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs,' so as to provide compensation for members of the said Commission for the year 1908, and to provide for the sale of the real estate heretofore used in conducting the Dispensary, and to further provide for winding up the affairs of the State Dispensary," approved the 24th day of February, 1908 (XXV Stats., 1289).

By Section 3 of the original Act it was the duty of the Commission to close out the entire business and property of the State Dispensary, except the real estate, and including stock in the several county Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. * * *

By Section 8 said Commission was given "full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission."

By Section 11 of the amendatory Act, said Commission was declared "to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law: *Provided*, further, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court."

By Section 12, "no funds arising from the sale of assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission, shall be paid out for any purpose, or to any persons whatsoever, except upon the cheque of the Chairman of said

Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such cheques as may be presented by the Chairman of said Commission only upon presentation of the same together with a certificate of said Commission, or a majority thereof, which certificate shall show: that the said cheque is issued in payment of some expense provided for by statute; or, necessarily incident to closing up the affairs of the Dispensary; or, for services rendered said Commission in closing up the affairs of said Dispensary; or, contracted for in accordance with law by said State Dispensary Commission; or, that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due and upon such adjudication ordered paid."

The plaintiff in error, who had been engaged since 1902, or for some time prior thereto, in the manufacture of bottles, demi-johns, etc., had been supplying the State Dispensary until some time in the early part of 1906, at which time an investigation had been instituted by the State into the alleged corrupt practices of third persons with the Board of Directors, and charges of gross misconduct had been made, and had, from and after April, 1906, further supplied the State Dispensary with its manufactured articles for use in the operation of the State Dispensary, under entirely different circumstances, and without any alleged undue influence or combination with the officers of the State Dispensary, at reasonable and proper prices, presented its claim to said Commission for \$23,013.75. Upon such presentation, hearings were had, whereat testimony of witnesses was introduced, as well as documentary evidence with regard to the prior transactions of plaintiff in error with the Board of Directors. After hearing such testimony, and argument thereon, the Commission filed its decision on the 17th of November, 1909, wherein it found that there had been illegal and improper transactions between the operating officers of plaintiff in error and the Board of Directors of the State Dispensary, and that the result of such combination and agreement was that the State had been made to pay to plaintiff in error, in excess of the fair and reasonable market price of the goods sold, the sum of \$51,432.99, and as a result of their hearing and investigation as to whether or not the claim presented was

a just liability, they held that it was not, and offset the same by what they had ascertained that the State had been illegally, by the combination between the plaintiff in error and the Board of Directors, charged for its purchases, to wit, \$51,432.99, which, being deducted, still left the plaintiff in error indebted to the State of South Carolina in the sum of \$28,419.24. See opinion of Commission, Tr., f. 105, p. 60.

It was not claimed in the State Court that the finding of this indebtedness to the State amounted to a judgment, or an ordinary judicial ascertainment of the debt upon which judgment and execution could issue, or a lien created upon the property of the plaintiff in error situate in South Carolina; but it was contended that, in the ascertainment of whether the claim then presented by the plaintiff in error was a just liability, they ascertained that they owed the State for money illegally obtained from the officers of the State through conspiracy and combination, and should be returned to the State. Therefore, the claim was rejected.

From this decision an appeal was taken, as provided for by statute, to the Supreme Court of the State.

After this decision by the Commission, nothing was done by it until after the passage of an Act by the General Assembly of the State, entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved the 23d day of February, 1910 (XXVI Stats., 876). This Act is set out in the transcript at folios 35 to 39, pages 21 to 23, and is also printed in the Appendix to this brief.

Under this Act, by Section 4, it is provided that "the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former county Dispensary, or of any assets belonging to any existing county Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden, upon the order of the State Dispensary Commission, to pay out any such funds until so permitted by the said Commission."

By Section 6 of said Act it is provided: "In any and all cases where the State Dispensary Commission has heretofore found any

amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State."

By Section 10 of this Act it is provided: "This Act shall take effect immediately upon its approval by the Governor."

Immediately thereafter, notice was given to the Richland County Dispensary Board by the Commission to withhold all moneys in its hands which might ordinarily be applicable to the payment of any account with the plaintiff in error. There was no proof that any notice was given to any other County Dispensary Board.

By Section 9 of said Act it is provided that "In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any county in this State, the said Commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lean upon any such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State."

In pursuance of this provision, the Commission did direct and authorize the institution before it of an examination of the said claim, and that notice to the plaintiff in error should be given, pursuant to the provisions of said Act, and did file in the office of the Clerk of the Court of Common Pleas for Richland county the notice set out in paragraph 9 of the complaint. Whereupon this

proceeding was commenced in the original jurisdiction of the Supreme Court of the State, alleging the creation of the Commission under the Acts before recited, the transactions of the plaintiff in error with the old Board of Directors of the State Dispensary, setting out the decision of the Commission upon the claim presented by it, denying their right to offset the claim of the State against the claim presented by it, alleging information that the Governor of the State had directed or would direct the withholding of moneys in the hands of Dispensary Boards of counties applicable to the payment of the same, and applying them to the amount or retaining them on account of the claim of indebtedness that the State held against it; that the accounts kept by the several county Dispensaries showed that there was owing to the plaintiff in error, on the 20th of November, 1909, on transactions had with plaintiff in error, the sum of \$6,355.92 (this amount was ascertained to be incorrect, and that the correct amount was \$10,890.45. See answer at page 17 of the transcript, and Exhibit C to the finding of the referee, which shows the amount to be \$10,420.14).

That an arrangement had been entered into between W. F. Stevenson and counsel for plaintiff in error, which it was claimed had been violated by the Dispensary Commission, acting under the Act of February 23, 1910. And plaintiff in error prayed for judgment that the defendants be perpetually enjoined and restrained from allowing the notices aforesaid to be contained on file in the office of the Clerk of Court for Richland county, and from in any manner demanding or receiving said sums, or any of them, alleged to be due by the several county Dispensaries to plaintiff in error, or from in any manner interfering with the payment of any such sum or sums by said county Dispensaries to plaintiff in error, and for other and further relief. Tr., ff. 1-12. pp. 1-7.

A rule to show cause was issued upon this complaint, and return made thereto by all of the defendants, setting out in full the entire transaction, as appears from the return, and stating the exact amounts due, and further that there was no violation of the agreement upon the part of Mr. Stevenson, but on the contrary, that this agreement, which was contained in his letter to Mr.

Lyles, set out in the complaint, had been violated by the plaintiff in error by withdrawing from the Dispensary Boards the amount of \$4,534.53, because of the fact that the Commission relied upon such agreement and had not notified the several County Dispensary Boards to decline to pay any claim due to the plaintiff in error; and further setting forth that they had acted as provided in said Act in giving said notice to the Richland County Dispensary Board and in filing a notice of the State's claim with the Clerk of Court for Richland county, in which county the plaintiff in error possessed certain real estate and manufacturing plant. Tr., ff. 17-38, pp. 11-23.

Upon the return being made, the Supreme Court referred it to the master for Richland county to take testimony upon such questions of fact as arose upon the complaint and affidavits annexed thereto and the returns and answers of the defendants, etc. (Tr. f. 52, p. 31.)

He made his report (Tr., f. 92, p. 53), and exceptions were made thereto by defendants in error (Tr., f. 96, p. 55); but as the Supreme Court did not determine these exceptions, nor saw fit to consider the question of the agreement between the counsel, what was the actual agreement as judicially ascertained has not been determined, the Court saying:

"From the foregoing it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to that matter." (Tr., f. 118, p. 68.)

From this judgment the plaintiff in error has sued out this writ of error and has made the assignments of error found in the transcript at folios 130 to 134, pages 75 to 77.

BRIEF OF ARGUMENT.

The first assignment is that the Supreme Court of South Carolina erred "in holding and deciding that the State Dispensary

Commission acted within the limits of the authority and discretion conferred upon it by the Legislature, in ordering the funds in the hands of the county Dispensaries due to plaintiff turned over to itself, and that the said action of the said Commission did not impair the obligation of plaintiff's contract with the State and deprive plaintiff of its property without due process of law and deny to plaintiff the equal protection of the laws, in violation of Section 10, of Article I, and Section 1 of the Fourteenth Amendment of the Constitution of the United States."

We think that the contention of the plaintiff in error as made by this assignment, as well as the other assignments of error, is based upon erroneous assumptions and misapprehensions of the facts. The claim of the plaintiff in error of \$23,013.75, which was presented to the State Dispensary Commission, arose from transactions had with the old Board of Directors of the State Dispensary, and under contracts with that Board. The moneys involved in this case arose after the repeal of the Dispensary Law of 1896, and its amendments, and the abolishment of the State Dispensary. We are not concerned here with any contracts made by the Board of Directors of the State Dispensary, but with contracts that were made with the several County Boards created under the Act of 1907. A good many of the counties, after running for some years, had voted out the county Dispensary, and there were only five or six County Boards in operation at the time this action was brought.

As heretofore stated, there was on the 20th of November, 1909, due to the plaintiff in error, as appeared from the books of the several Boards, and as shown by the report of the master in this case, \$10,420.14. This included not only the county Dispensaries which had ceased operations, but as well those in operation. The question, then, is whether this money in the hands of the several Boards was money belonging to the State, or whether it was money belonging to the plaintiff in error; that is to say, whether it had any vested interest in this money or any lien thereon.

The General Assembly, in an Act approved the 24th of February, 1908, entitled "An Act to make appropriations to meet the expenses of criminal prosecutions and proceedings against certain

officers and other persons, and to provide for the payment thereof," by Section 1 directed "that the sum of \$15,000, or so much thereof as may be necessary, be, and is hereby, appropriated to meet the expenses of any criminal prosecutions that have been or may be commenced against any person or persons charged with violation of the law in any manner connected with the late institution called the State Dispensary, including expenses of associate counsel and such other expenses as may be incident thereto: *Provided*, That the Attorney General shall not employ any member of the General Assembly as attorney in said prosecutions."

And by Section 2, "that the said sum of \$15,000 shall be paid into the State treasury by the State Dispensary Commission out of any funds in its hands arising from the business or property of the State Dispensary, and the same shall be paid out by the State Treasurer upon the warrant of the Comptroller General, and accounted for in the same manner as other funds appropriated for the use of the Attorney General's office."

Mandamus proceedings were commenced by the Attorney General to require the State Dispensary Commission to comply with Section 2 of the Act, and the question there presented was whether or not the funds in the hands of the State Dispensary Commission arising from the business or property of the State Dispensary belonging to the State could be disposed of as it should direct, and it was there held by the Supreme Court that the "State Dispensary and all of its assets acquired under the statute are to be regarded as the property of the State, and the debts contracted in its lawful management are to be regarded as the debts of the State, not only by virtue of the judgment of the highest Courts of the land, but also by virtue of the expressed declarations of the Constitution of the State."

State ex rel, Lyon, Atty. Gen., vs. W. J. Murray, et al., as State Dispensary, Commission, 79 S. C., 316.

Further, that Court says:

"It seems hardly necessary to say there is no legal requirement that the State shall manage its financial affairs or any branch of them through one general fiscal agent called its Treasurer, or that

its funds or any portion of them should be kept in one office called its treasury. The State Treasurer is a constitutional officer, but his duties and powers depend entirely upon the will of the General Assembly of the State. Presumably, the State funds are in his hands, but the General Assembly may require the public funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors." *Idem*, p. 325.

That Court further decided that the contracts made by the Board of Directors of the State Dispensary in operating and running such business were, under the terms of the Constitution of the State, contracts of the State, and that the relation of simple creditor and debtor was created thereby, without any lien or trust whatever upon any of the funds derived from the operation of the State Dispensary in favor of the creditor, and that the moneys derived from the conduct of such business were the funds of the State while in the hands of the Board of Directors, as well as in the hands of the State Dispensary Commission, created to wind up the affairs of this departmental institution of the government, as it has been called.

This case was cited by this Court in *Murray vs. Wilson Distilling Co.*, 213 U. S., 165, and the conclusion reached by the Supreme Court in the mandamus proceeding were affirmed in that case, the same questions arising therein as in the case before the State Supreme Court. This Court said:

"If we consider as an original question the provisions of the Constitution of South Carolina on the subject, and the terms of the statutes of that State establishing the Dispensary system, we think it is apparent that the purchases were made by the State officers or agents, of liquor for consumption in South Carolina, were purchases made by the State for its account, and, therefore, that the relation of debtor and creditor arose from such transactions between the State and the persons who sold the liquor. And this irresistible conclusion, arising from the very face of the Constitution and statutes, is removed beyond all possible controversy by the decision of this Court in *Vance vs. Vandercook Co.*, 170 U. S., 438, and by the construction given by the Supreme Court of

South Carolina to the State statute prior to the commencement of this litigation, in *State, ex rel. Hay vs. Farnum*, 73 S. C., 165, as well as by the convincing opinion expressed by that Court in reviewing the State statutes in the mandamus case already referred to, as reported in 79 S. C., 316."

It is true that this claim arose not from the sale of liquor, but from the sale of bottles, demijohns, etc., which were necessary in the conduct and operation of the State Dispensary, as it was also necessary for the conduct of the county Dispensaries. The construction of the statutes, and the reasoning of the Courts in these cases must apply to this case, unless the Act of the Legislature which created the County Boards produced a different relation.

This Court, in speaking of this second Act, in the same case of *Murray vs. Wilson Distilling Co.*, *supra*, said:

"The law of 1896, as amended, was repealed on February 16, 1907. Acts So. Car. 1907, p. 463. The repealing Act did away with the general control of the traffic by means of a State Board, and therefore abolished that Board. Instead of the provision previously existing, a more local one was substituted. The question whether liquor should be sold in a particular county was left to the voters of the county. If, as the result of an election, it was determined that the traffic in liquor should exist in a county, it was provided that such traffic should be exclusively carried on by means of County Boards, appointed by the Governor. Conformably to the Constitution, these Boards were authorized to buy, 'in the name of the State,' liquors to be sold within the county, with a proviso, however, restricting the liability of the State to the sum of the assets of the local Dispensary."

The principal features of the old law with regard to the purchase of whiskies were distinctly maintained. In truth, the only change that occurs to us which was made is contained in Section 6, where the County Dispensary Boards are declared to be county officers, and are authorized and empowered under the authority and in the name of the State to buy in any market and retail within the State the liquors and beverages as provided therein. This is using the very terms of the Constitution. The proviso is that the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which

the purchase was made, and this is the only new clause, and this it is that is contended creates a trust in favor of the plaintiff, in error, who did not deal in liquors and beverages.

These officers are denominated county officers; nevertheless, they are agents of the State, contracting by authority of and in the name of the State, and clearly cannot be transmuted into trustees of the plaintiff in error and other simple creditors, and placed under control of the Courts to compel them to pay to such creditors moneys which it is claimed they hold, for to undertake to hold this position is to reverse the precise point decided in the case of *Murray vs. Wilson Distilling Co.*, *supra*, that the State cannot be compelled to perform its contract of purchase by enjoining its officers who have acted by its authority and in its name.

It is argued for the plaintiff in error that it had a vested right in the proceeds of the sale of glassware so purchased, inasmuch as by the statute a trust was created in the proceeds of the sale of such ware, and resort is made to Section 5 of the Act of 1907 for this construction. The purchases made by the County Dispensary Boards from plaintiff in error were for glassware, and the accounts due by the State through such County Dispensary Boards from plaintiff in error were for glassware, and not for liquor and beverages, which they were authorized and empowered, under the authority and in the name of the State, to buy in any market and retail within the State.

The lien claimed, or the trust which was impressed upon the proceeds of the sale of whiskey could have no more foundation in the case of the purchase of glassware than it would have for the purchase of fuel or wrapping paper used in the Dispensary as a necessary expense thereof.

In an action at law brought by the plaintiff in error against the defendants in error, in the District Court of the United States for the Eastern District of South Carolina, to recover some moneys which were in the hands of the several County Dispensary Boards, the same points were made. The District Judge, who, upon stipulation of counsel submitting all the issues to him instead of to a jury, upon this point, says:

"If the facts were as they are presumed to be by the plaintiff in its pleading, this Court would find no difficulty in holding as a

conclusion of law that so much of the Act of February 23d, 1910, as may seek by force of the Act itself to divest the plaintiff summarily of any vested right or title acquired by virtue of the Act of February 15, 1907, or as may seek to take summarily any property belonging to plaintiff and apply it to the State's use, is null and void. In other words, if the said amount of \$17,550.07 was a fund belonging to the plaintiff, was its property, to which it had title, then the Act of February 23, 1910, in so far as it attempted to summarily take that fund and give it to the State without proper judicial process, was and is null and void under the provisions of the United States Constitution above mentioned. If, however, the said amount of \$17,550.07 was not a fund to which the plaintiff had such title as to be able to recover it in the proceedings now before this Court, but, if it was and is the property of the State of South Carolina, then the statute would not be subject to the prohibitive clauses of the United States Constitution. * * * To whom did the fund of \$17,550.07 belong both before and after it reached the hands of the defendants? Under Section 6 of the Act of 1907, County Dispensary Boards are 'authorized and empowered under the authority and in the name of the State to buy in any market and retail within the State liquors and beverages as provided herein.' If this was all, there would be no doubt that the County Dispensary Board was simply the agent of the State to do as commanded. If the liquors and beverages were purchased under the authority and in the name of the State, then the State was the purchaser and the owner of the articles when purchased. Necessarily it follows from this that, if the State was the purchaser, the State was the party liable on the contract of the vendor for the purchase price. Necessarily it also follows that, if the State was the purchaser and the owner of the articles when purchased, it was also the owner of the proceeds of the same articles when sold by its direction. It is true that in the first two lines of this section the members of the County Dispensary Board are declared to be 'county officers.' There is no reason, however, why the State should not operate, if it sees fit, through or by means of local county officers who owe the existence of their office to a State statute, as well as by means of general State officers. It might be a question if the officers

chose to make it, whether as a county officer the performance of a general State duty could be devolved upon him, but, if the act performed was one in the name and under the authority of the State, the State would still be the responsible party, notwithstanding it might have been performed by an officer who could not have been compelled to perform it.

"So the proviso following the clause above quoted is: 'That the State shall not be liable upon any contract for the purchase thereof beyond the actual cash assets of the Dispensary for which the purchase is made.'

"The very language of this clause would show that it was intended that the State should be liable upon any contract up to the extent of the actual assets of the county Dispensary for which the purchase was made. If the State was liable, then it meant that the State was vendee, and as such the owner of the property purchased. That the liability of the State was limited would not appear to affect this logical sequence. This limitation would appear simply to be notice to any one selling to the County Dispensary Board on the credit of the State that it must be careful not to sell to that particular County Dispensary Board any articles which exceeded in the cost price the actual assets in the hands of that particular County Dispensary Board. It would not, however, affect the express provision that, if it did sell, it sold to them under authority and in the name of the State; in other words, sold to the State the articles sold. This inference is corroborated by the provisions of Section 18, providing for the division of the profits in each county of the business of the sale of alcoholic liquors and beverages as carried on under the statute by the County Dispensary Board. These profits are arbitrarily divided differently in different counties. In some one-third goes to the municipality in which the Dispensary may be located; in another one-half goes to such municipality; in other counties one-third goes to the county school fund; in other counties only one-fifth goes to that fund. This evidences that the State retained to herself the entire control of the profits to be distributed as it saw fit, as its own money and with the power at any time by statute to repeal any existing mandate for the division of these profits, and make another and wholly different distribution.

"It is claimed that, inasmuch as the statute only undertakes to deal directly with the distribution of the profits of the business, the inference is that the balance was devoted by the State to the payment of the expenses of that business and incidentally as part of those expenses to the payment of the persons from whom the articles necessary for the business were purchased. It is contended that this constitutes such balance a sort of trust fund to be held by the County Dispensary Board for those specific parties, thus constituting the persons who might be the holders of that indebtedness, which must be deducted before the profits are ascertained, beneficiaries directly interested in the fund as a trust fund. This result would be a very strained inference under the circumstances. The direction that the profits must be ascertained and distributed may be a direction by the State to its agents to pay the expenses of the business before ascertaining and distributing the profits, but it is no more a segregation to the creditors individually of any part of the funds to pay the expenses than is the act of any prudent business man who pays the expenses of his business before he spends his profits. The State could at any time interfere and direct that these expenses should not be paid until vouched and audited as the State saw fit, or, in fact, it might expressly prohibit their payment until directed by an Act of the Legislature, or, if it chose to go to that length, might wholly forbid the payment. The method adopted by the State for the payment of the expenses of the business authorized by it in no sense can be fairly construed as constituting the proceeds of the State's own property which could be used by it for the payment of those or any other expenses, a trust fund to which the parties to whom the expenses should be paid are entitled to look to as a specific fund assigned to them of which they are the beneficiaries."

"The provisions of Sections 11 and 13 of the Act of 1907 lend no additional strength to the argument in favor of the inference sought to be drawn by the plaintiff. Those sections prescribe the methods to be followed by the State's agents in the conduct of the State's business, so as to secure its efficient and safe performance. In considering this very Section 6 of the Act of 1907, the Supreme Court of South Carolina held that the

county Dispensaries were conducted under the authority and in the name of the State. "Therefore the officers in charge of them are agents of the State, and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold them are the debts of the State." *Glass Co., vs. State*, 87 S. C., 288. In the same case the State Court affirmed the conclusion of that Court in the case of *State vs. Dispensary Commission*, 79 S. C., 325."

Carolina Glass Co. vs. Murray, 197 Fed., 396-399.

The judgment of the District Court was affirmed upon writ of error by the Circuit Court of Appeals of the Fourth Circuit (206 Fed., 635), and the reasoning of the District Court concurred in. It is true that there are writs of error taken to the District Court, as well as to the Circuit Court of Appeals, upon the decision, and the cases are now pending in this Court, but we cite this from the opinion as it sets forth, we respectfully submit, the true construction of the County Dispensary Board Act of 1907. Hence, we submit that the Act creating such County Dispensary Boards did not change in any way the construction and principles laid down in the cases of *State, ex rel. Lyon vs. Murray, et al.*, 79 S. C., 316, and *Murray vs. Wilson Distilling Co.*, 213 U. S., 151.

It has also been well settled, which needs no discussion, that the State cannot be sued without its consent, and that such consent can be given, as it is a voluntary act, under such conditions as it sees fit to impose.

Beers vs. Arkansas, 20 How., 527.

Smith vs. Reeves, 178 U. S., 436.

Chandler vs. Dix, 174 U. S., 590.

Murray vs. Wilson Distilling Co., 213 U. S., 151.

Bolens vs. Wisconsin, 231 U. S., 616.

Here the State has prescribed how the claim should be presented, and has conferred the power and imposed upon the State Dispensary Commission the duty to investigate, ascertain, determine and fix upon whether such claims when presented are just liabilities of the State.

It is contended under the first assignment of error that the action of the Commission impaired the obligation of plaintiff in

error's contract with the State, and deprived plaintiff in error of its property without due process of law. The contract with the State, who through its proper officers purchased glassware from plaintiff in error, created, as stated, the simple relation of debtor and creditor. There was no legal obligation enforceable in law or equity against the State. There only existed a moral obligation. There was no remedy to be taken away that plaintiff in error possessed or could enforce; nor was it deprived of any of its property which was in the hands of the county Dispensaries, because it was not its property, but it was the property of the State, which could dispose of it as it saw fit, and under the Act, when its officers notified the Dispensary Board to withhold payment of plaintiff in error's claim, or ordered the fund or funds in the hands of the county Dispensaries to be turned over to the State Commission it was disposing of its own property in such way as it saw fit, and did not deprive the plaintiff in error of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

The judgment of the State Supreme Court under review, in construing Section 4 of the Act of 1910, which authorized the State Dispensary Commission "to order any officer or officers in charge or custody of any fund or funds arising from the sale of the assets of any former county Dispensary, or of any assets belonging to any existing county Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission," and Section 6, "in any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as

may be on hand, to cover the amount so found to be due the State," declared them to be valid, and held:

"In ordering the funds in the hands of the County Boards turned over to itself, the Commission acted within the limits of its authority and discretion conferred upon it by the Legislature, and this Court has no power to interfere."

The Court further determined that Section 7 of the Act, which created a lien upon all judgments rendered by the Commission on the property of the judgment debtor situated within the State, etc., was invalid, as well as the provisions of Section 9 of said Act, which authorized the filing of a notice with the Clerk of Court in accordance with its terms, and that therefore that the act of the Commission and its attorneys in filing said notice was without warrant of law, and should be enjoined. In this respect the Court says:

"So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted, except through the Courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the Act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void. The judgment of this Court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in the office of the Clerk of Court for Richland county, and that said notice be cancelled of record." *Tr. f. 122, p. 70.*

All other provisions of the Act were held to be valid. The Commission undertook to defend and justify its actions by the provisions contained in Sections 7 and 9 of the Act. Such

defense and justification was declared to be untenable because of the unconstitutionality of such provision, but so far as the Act was valid it gave justification to the defendants, and as their acts were the acts of officers of the State only and not as individuals, and done in the performance of their statutory duties and under the directions of the State and for the interests of the State in the protection of its funds, to that extent it was an action substantially against the State, and the Court could not interfere.

(2) The second assignment imputes error to the Supreme Court of the State in holding and deciding "that it was unnecessary to inquire whether there was any agreement between the attorneys for plaintiff and the attorneys for the State of South Carolina as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated, and that the Dispensary Commission was the sole arbiter of plaintiff's rights, if it had any, with regard to the matter, when plaintiff asserted and claimed protection from such contract rights under Section 10 of Article I of the Constitution of the United States."

If the funds in the hands of the county Dispensaries was the property of the State and not that of plaintiff in error, nor was it subject to any lien or trust in favor of it, then it necessarily followed that the control over it rested with the Legislature, who subsequently, on the 26th of February, passed an Act containing provisions which directed the Dispensary Commission how to control or dispose of the same, and the plaintiff in error had no right to and could assert no right to such funds, whatever may have been the negotiations by counsel who were not empowered by any Act existing at that time to dispose of the rights of the State in such property. And this being the case, the plaintiff in error could only adjust or settle its claim with the State Dispensary Commission, upon whom power had been conferred by the Act of 1910. As a matter of fact, however, it appears that there was confusion upon the part of respective counsel as to what arrangement had been made, but it certainly appears in the record that, with regard to the assets in the hands of the County Dispensary Boards at the time of the alleged agreement, there was no arrangement or stipulation upon the part of Mr. Steven-

son to surrender such funds to the plaintiff in error or to assent to the payment by county Dispensaries of any claims of plaintiff in error contracted with it prior to the 20th of November, 1909; Mr. Stevenson in his letter to Mr. Lyles expressly stating that he would confer with counsel as to the accounts due the company as soon as he had reached a determination as to them, and that with regard to future shipments that he would not ask the money to be held, "so as to interfere with the money coming from any shipment made today or hereafter until further notice." Tr. f. 7, pp. 4, 5.

The amount then due, it was subsequently ascertained, was \$10,420.14, but it appears that in the meanwhile and prior to the approval of said Act, the plaintiff in error had, without notice to any member of the Commission or any one representing the State's interest, withdrawn from the county Dispensaries that had ceased to operate because of having been voted out by the people, \$6,915.95. See Report of Referee, Tr. f. 95, p. 55. It is quite evident that whatever may have been the intention of either of the respective counsel, it could not affect the Legislature's right to pass the Act in question with regard to the disposition of funds in the county Dispensaries prior to the 20th, and such as might thereafter come into its hands. The moneys which were on hand in the county Dispensaries and which the County Dispensary Boards were directed by the State Dispensary Commission not to pay out were about the same amount as was originally on hand, so far as can be ascertained without a proper accounting, and although the plaintiff in error's officers had violated the agreement, and had taken from the Dispensaries moneys which belonged to the State, yet the State having in possession of its officers moneys which were applicable to the payment of the current business of the concern, could take and withhold the same as its own, in substitution for that which had been improperly taken.

But it does not appear to us that this raises any Federal question which this Court can review. To make a contract in behalf of the State, there must be some authority shown upon the party assuming to act for the State. And there is no pretense in this case that there was any such authority shown. The defendants

in error here certainly did not act. There was no resolution conferring upon one of the counsel assuming to represent it authorizing him to make such contract in behalf of the Commission in the interests of the State of South Carolina, nor as a matter of fact did the Commission have any such authority to confer or give. There was no authority shown upon the part of the Governor or the Attorney General to bind the State by virtue of any Act or Resolution of the State with regard thereto, and there was no obligation upon the part of the State which had been violated or which could disturb the rights of the State with regard to its own funds in the hands of its officers. Hence, the Supreme Court of the State, having the matter before it, distinctly declares that "It is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county Dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to the matter."

That is to say, that at the time of the writing of such order, under the Act of 1910 the Commission had a right to adjust and settle the claims of the State against the plaintiff in error.

(3) The third assignment imputes error to the State Court in holding "that there was not a legally and morally binding contract between plaintiff and the State of South Carolina, and the defendants as agents and representatives of said State, concerning the shipments and deliveries to be made and actually made by plaintiff to the county Dispensaries, in which plaintiff was protected by Section 10 of Article I of the Constitution of the United States."

We have just stated that there was no contract, that the minds of the parties had not met with regard to this matter, and that there was a misapprehension and confusion. But we have further pointed out that with regard to its rights there does not appear to be any authority to make a contract, even if one had been made, and that therefore there was no obligation to be impaired, and further, that the plaintiff in error was the party

which had violated the contract, and that the State had a right to retain the equivalent of what, in violation of such arrangement, if there was such, it had taken from the officers of the State.

(4) This assignment imputes error upon the part of the State Court in holding that the "action of the defendants taken pursuant to the Act of February 23, 1910, entitled 'An Act to further provide for the winding up of the State Dispensary,'—in ordering and requiring the county Dispensaries to pay over to defendants the funds due plaintiff and the title to which was at least in equity and good conscience in plaintiff, was unconstitutional, null and void, because in violation of Section 10 of Article I and Section 1 of the Fourteenth Amendment of the Constitution of the United States."

We have already endeavored to point out as succinctly as we could, that the plaintiff in error had no vested right, title or interest in and to such assets, nor any lien upon the same, nor was there any trust imposed thereon for the benefit of the plaintiff in error, and that the action of the Commission in notifying and requiring the county Dispensaries to withhold the funds and not pay the same over to the plaintiff in error was in pursuance of a direction of the Legislature, which said direction was valid and binding upon them.

(5) This assignment imputes error to the State Court in holding and deciding that the "Act approved February 23, 1910, entitled 'An Act to further provide for the winding up of the affairs of the State Dispensary,' was unconstitutional, null and void, in so far as it authorized, required or permitted defendants to receive, take or confiscate the funds in the hands of the county Dispensaries due and owing to plaintiff, and at least in equity and good conscience the property of plaintiff, because the same impaired the obligation of plaintiff's contract with the State, deprived plaintiff of its property without due process of law, and denied to plaintiff the equal protection of the laws, in violation of the Constitution of the United States."

This assignment of error also ignores the settled construction of the statutes, to the effect that the funds in the hands of the county Dispensaries were not the funds of the plaintiff in error, nor was it entitled thereto by reason of any lien or vested right

therein, but that the same was the property of the State and subject to its direction and control, and therefore there could be no impairment of the obligation of plaintiff in error's contract of purchase with the State.

It is respectfully submitted that the judgment below should be affirmed.

THOMAS H. PEEPLES,
BENJAMIN LINDSEY ABNEY,
Counsel for Defendants in Error.

October 30, 1914.

APPENDIX.

CONSTITUTIONAL PROVISIONS.

Article VIII, Section 11, Constitution 1895.

"In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, county and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same."

Article XI, Section 12, Constitution 1895.

"All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however*, That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of

alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided."

STATUTES.

(XXV Stats., 835.)

AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY
CONNECTED WITH THE STATE DISPENSARY, AND TO WIND
UP ITS AFFAIRS.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well-known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

SEC. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

SEC. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased; and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for

the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further,* That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

SEC. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided,* That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

SEC. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

SEC. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

SEC. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

SEC. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved 24 January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided,* That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, A. D. 1907.

(XXV Stats., 1289.)

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATE HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs," approved the 16th day of February, 1907, be, and the same is hereby, amended by striking out the figure 8 at the end of Section 4, and inserting in lieu thereof the figure 9, and by adding at the end of said section the following: "That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars:" *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

SEC. 2. That said Act be further amended by adding at the end thereof the following, as Section 9: "Section 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, the typewriters, adding machines, files, metal, and other furniture in the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided,* That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same: *Provided, further,* That the

typewriters, adding machines, files, metal, and other furniture may be transferred by the Commissioners of the Sinking Fund to any of the State offices that, in the judgment of the Commissioners, may need them."

SEC. 3. That said Act be further amended by adding the following as Section 10: "Section 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary."

SEC. 4. That said Act be further amended by adding the following as Section 11: "Section 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been, or may hereafter be, collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court," so that said Act, when so amended, shall read as follows:

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of \$10,000.00.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State, except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5.00) dollars per day for each day actually employed about the business and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1, 1909: *Provided, further*, That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars: *Provided, further*, That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants, and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of all their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by

them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of the assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission shall be paid out for any purpose or to any person whatsoever, except upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same, together with a certificate of said Commission or a majority thereof, which certificate shall show: that the said check is issued in payment of some expense provided for by statute, or necessarily incident to closing up the affairs of the Dispensary, or for services rendered said Commission in closing up the affairs of said Dispensary, or contracted for in accordance with law by said State Dispensary Commission, or that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due, and upon such adjudication ordered paid.

In the Senate-House the 21st day of February, in the year of our Lord one thousand nine hundred and eight.

THOS. G. McLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 24th day of February, A. D. 1908.

M. F. ANSEL,
Governor.

(XXVI Stats., 876.)

AN ACT TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS
OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

SEC. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

SEC. 3. Any finding of the State Dispensary Commission, under the provisions of this Act, shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any County Dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and

each and every County Dispensary Board and other officer in charge of County Dispensary funds or assets arising from the sale of property belonging to a County Dispensary, or Dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or sums of money whatsoever, turn over to the State Dispensary Commission a sufficient sum of money, or so much as may be on hand, to pay the debt due the State, any balance remaining to be applicable to any just claim of such creditor against a County Dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

SEC. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former County Dispensary, or of any assets belonging to any existing County Dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

SEC. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document or witness, or shall refuse to submit to the authority or jurisdiction of the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all County Dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: *Provided*, All persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: *Provided, further*, The Attorney General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed to be due by each such person, firm or corporation, to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

SEC. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and to do any and all things necessary to carry out the purpose of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the General Assembly concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

SEC. 9. In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any county in this State, the said Commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon any such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

SEC. 10. This Act shall take effect immediately upon its approval by the Governor.

In the Senate-House, the 19th day of February, in the year of our Lord one thousand nine hundred and ten.

THOS. G. McLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 23d day of February, A. D. 1910.

M. F. ANSEL,
Governor.



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Supreme Court of the United States

OCTOBER TERM, 1914

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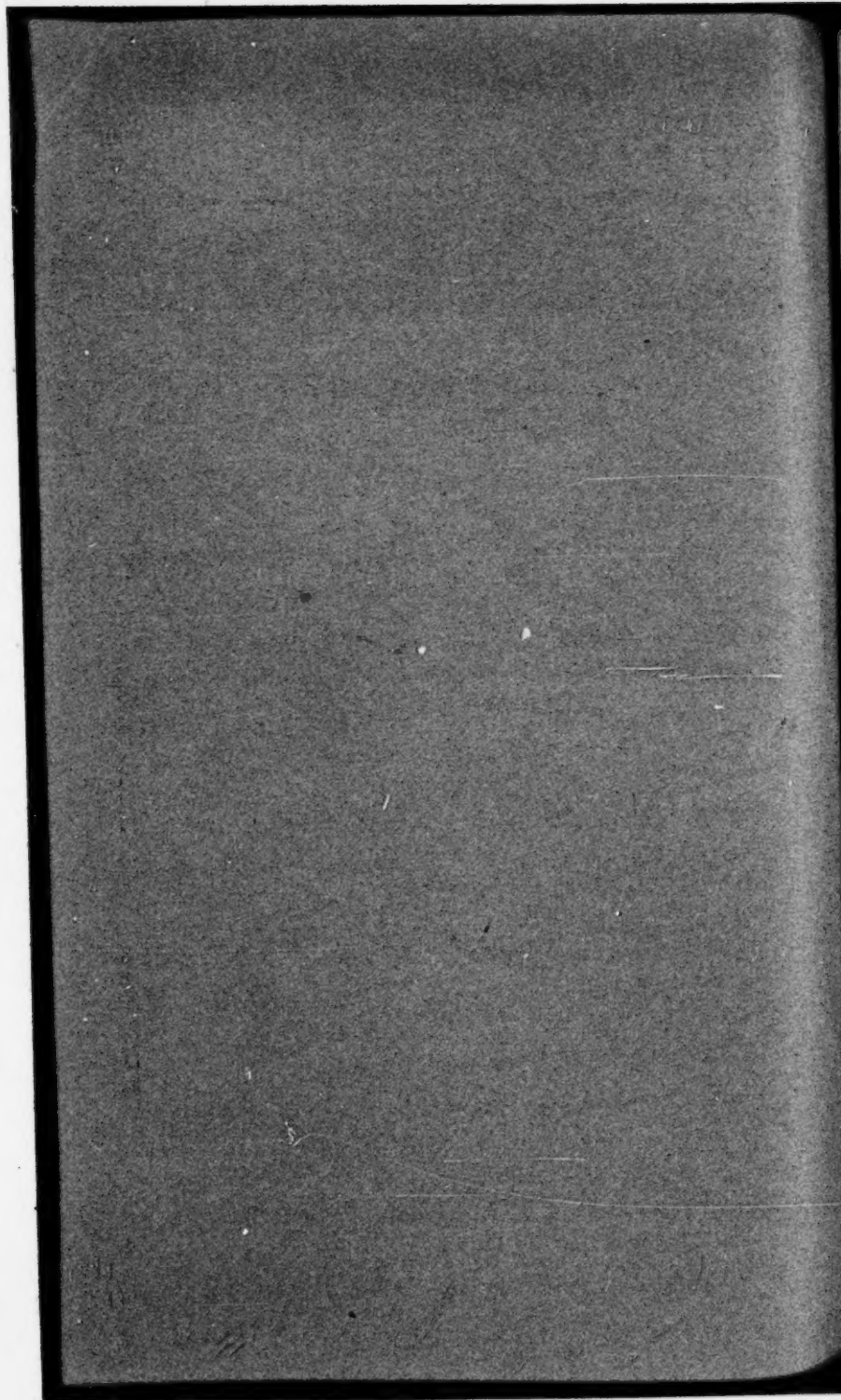
CAROLINA GLASS COMPANY, *Plaintiff in Error,*

vs.

THE STATE OF SOUTH CAROLINA.

In Error to the Supreme Court of the State of South Carolina.

ARGUMENT OF THOMAS H. PEPPLES AND BENJAMIN LINDEY ARNEY,
FOR STATE OF SOUTH CAROLINA.



Supreme Court of the United States

OCTOBER TERM, 1914

No. 85

CAROLINA GLASS COMPANY, *Plaintiff in Error*,

vs.

THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

In Error to the Supreme Court of the State of South Carolina.

**ARGUMENT OF THOMAS H. PEEPLES AND BENJAMIN LINDSEY ABNEY,
FOR STATE OF SOUTH CAROLINA.**

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Supreme Court of the United States

OCTOBER TERM, 1914.

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THE CAROLINA GLASS COMPANY, *Plaintiff in Error*,

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THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

Argument of Thomas H. Peebles and Benjamin Lindsey Abney,
for State of South Carolina.

STATEMENT OF CASE.

Under an Act of the General Assembly of the State of South Carolina, entitled "An Act to Provide for the Disposition of All Property Connected With the State Dispensary, and to Wind Up Its Affairs," approved the 16th of February, 1907 (XXV Stats., 835), and under another Act of said Assembly amending the aforesaid Act, approved the 24th of February, 1908 (XXV Stats., 1289), a Commission was created, to be known as the State Dispensary Commission, whose duty it was to close out the business and property of the State Dispensary, collect all debts due, and pay all just liabilities of the State growing out of said business. They had further full power and authority to investigate the past conduct of the affairs of the Dispensary, as also all the power and authority conferred upon a committee which had been appointed under a resolution to investigate the affairs of the State Dispensary (XXIV Stats., 1220).

By the amendatory Act referred to, the Commission was given full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State all just claims which had been submitted to and determined by it, and no other, out of the assets of the Dispensary which had or might thereafter be collected by the State Dispensary Commission. These statutes appear in an Appendix hereto. By a proviso to the amendatory Act, contained in Section 11 thereof, each and every person, firm or corporation presenting a claim or claims to said Commission should have the right to appeal to the Supreme Court, as in cases at law, and that notice of intention to appeal should be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

The plaintiff in error presented its claim for \$23,013.75, as a balance due it by the State for bottles, demijohns, etc., furnished to the Dispensary, under contracts made with the Board of Directors, from and including April, 1906, until its business was closed out by the Commission. A hearing upon said claim by the Commission was given to the plaintiff in error, which appeared by its officers and counsel, and witnesses and documentary evidence were submitted, each party cross-examining said witnesses, or the opportunity given. Tr. ff. 2, 3, pp. 1, 2; Judgment Tr. f. 19, p. 11.

After taking testimony from time to time for several days (which voluminous testimony is not made a part of this transcript), and after consideration and investigation of such claim, and of the past transactions of said company, the plaintiff in error, with the old State Dispensary, the Commission filed its conclusions or judgment with regard to said claim on November 17, 1909. This judgment is set out in the transcript at folios 19 to 25, pages 11 to 14.

The Commission held that the officers in control and management of the affairs of the plaintiff in error had entered into an illegal combination and agreement with the Board of Directors of the State Dispensary, whereby they had, between the years 1902

and until the early part of the year 1906, contrary to the provisions of the Dispensary Law and to the duties and obligations which the Directors owed to the State, charged the State exorbitant prices and in excess of what was legal and proper, and that such overcharges amounted to \$51,432.99, which should be offset against the claim in favor of said Carolina Glass Company, the plaintiff in error, to wit, its claim for \$23,013.75. Tr. f. 24, p. 14.

Further, that in its investigation, after deducting from said overcharges the amount of the claim filed by the plaintiff in error, the Commission found that the Carolina Glass Company was indebted to the State of South Carolina in the sum of \$28,419.24, and therefore the claim was held to be not a just liability of the State.

From this judgment the plaintiff in error appealed to the Supreme Court of the State, under the permission given by Section 11 of the Act of 1908. Such appeal was heard by the Supreme Court of South Carolina, and its opinion and judgment was rendered on the 29th of November, 1910 (Tr. ff. 40 to 53, pp 23 to 32), affirming the decision of the Commission upon the claim of plaintiff in error. This appeal was upon certain exceptions made to the decision of the Commission, which appear in the transcript at folios 26 to 39, pages 15 to 23.

This case is now brought by writ of error to this Court upon the assignments of error appearing in the transcript at folios 55 to 57, pages 32 to 34.

BRIEF OF ARGUMENT.

We submit that this Court has no jurisdiction to hear and determine this case upon this writ of error.

I.

The State of South Carolina, with regard to the claim of the plaintiff in error, could not be sued without its consent. The only consent that the State has given with regard to the presentment, proof and payment of said claim is contained in the Acts of 1907 and 1908, heretofore cited and appearing in full in the Appendix hereto.

Murray vs. Wilson Distilling Co., 213 U. S., 151.

Murray vs. State, ex rel. Ray, 213 U. S., 174.

The first Act, which was construed by this Court in the above case, gave no right of appeal. The second Act does, by Section 11 thereof, give such right of appeal, but it does not provide for any other or further trial of the case beyond its own Supreme Court. It has not consented that any other tribunal shall determine this question for it, or has waived its immunity from suit other than before its Commission and in its Supreme Court.

In the case of *Smith vs. Reeves*, 178 U. S., 436, this Court said:

"It is quite true the State has consented that its Treasurer may be sued by any party who insists that taxes have been illegally exacted from him under assessments made by the State Board of Equalization. But we think that it has not consented to be sued except in one of its own Courts. This is not expressly declared by the statute, but such, we think, is its meaning. The requirement that the aggrieved taxpayer shall give notice of his suit to the Comptroller, and the provision that the Treasurer may at the time he demurs or answers 'demand that the action be tried in the Superior Court of the county of Sacramento,' indicates that the State contemplated proceedings to be instituted and carried to a conclusion only in its own judicial tribunals. If a Circuit Court of the United States can take cognizance of an action of this character, the right given to the Treasurer by the local statute to have the case tried in the Superior Court of Sacramento county would be of no value; for, as the jurisdiction and authority of a Circuit Court of the United States depends upon the Constitution and laws of the United States, it could not refuse to take cognizance of the case if rightfully commenced in it, and to proceed to final decree, nor could it, merely in obedience to the laws of the State, transfer it to a State Court upon the demand of the State Treasurer. A Federal Court can neither take nor surrender jurisdiction except pursuant to the Constitution and laws of the United States."

It seems to us that, under the reasoning of this case, and the authorities there cited, this Court has no jurisdiction to entertain

this writ of error. The Legislature never intended that the question of claims against it of certain parties dealing with the old State Dispensary should be submitted to any other tribunal than the Commission to investigate and to determine, with a right of appeal as in cases of law from their decision to the Supreme Court of the State, and there to end.

In the State of South Carolina, in cases at law, the decisions of a jury or of tribunals at common law finding facts cannot be interfered with by the Supreme Court, as these findings are conclusive upon it if there is any testimony whatever to support them. Opinion of Supreme Court of State under review, Tr. f. 42, p. 24.

See, also, the cases of *Bolens vs. Wisconsin*, 231 U. S., 616, and *Chandler vs. Dix*, 194 U. S., 590.

In this connection the language used by this Court in *Murray vs. Wilson Distilling Co.*, 213 U. S., 151, 172, is, in our view, applicable:

"The absence in the winding up Act of a provision conferring authority to review in the ordinary Courts of justice the action of the Commission concerning claims, instead of supporting the contention that the State had abandoned all property right in the funds placed in the hands of the Commission, tends to a contrary conclusion, since it at once suggests the evident purpose of the State to confine the determination of the amount of its liability to claimants, to the officers or agents chosen by the State for that purpose. And it is elementary that, even if a State had consented to be sued in its own Courts by one of its creditors, a right would not exist in such creditor to sue the State in a Court of the United States. *Smith vs. Reeves*, 178 U. S., 436, and cases cited; *Chandler vs. Dix*, 194 U. S., 590. The situation, therefore, was not changed as a result of the Act of February 24, 1908, giving the creditors of the State, whose claims might be adversely acted upon by the Commission, the right to a review in the Supreme Court of the State."

We do not understand that the remarks of the Court in *Smith vs. Reeves*, *supra*, to wit:

"Nothing heretofore said by this Court justifies the contention that a State may not give its consent to be sued in its own

Courts by private persons or by corporations, in respect of any cause of action against it and at the same time exclude the jurisdiction of the Federal Courts—subject always to the condition, arising out of the supremacy of the Constitution of the United States and the laws made in pursuance thereof, that the final judgment of the highest Court of the State in any action brought against it with its consent may be reviewed or re-examined, as prescribed by the Act of Congress, if it denies to the plaintiff any right, title, privilege or immunity secured to him and specially claimed under the Constitution or laws of the United States," are in conflict with this latter expression of the Court. We understand from the language used that if in the suit which is permitted by the State against herself questions of Federal rights arise and are determined adversely by the Supreme Court of the State, a writ of error will lie to such Court from the Supreme Court of the United States, and there can be reviewed, but that this is far from meaning that, because a creditor may have certain rights to certain forms of procedure in the Federal Court inconsistent with the procedure which constitutes the conditions upon which the right to immunity has been waived by the State, such conditions of such consent must be considered as nonexistent.

The writ of error, therefore, should be dismissed.

II.

We submit that the assignments of error show that no Federal questions are involved.

The construction of these statutes has become settled law, both by the State Court (*State, ex rel. Lyon, Attorney General, vs. State Dispensary Commission*, 79 S. C., 316, and *Carolina Glass Co. vs. Dispensary Commission*, 87 S. C., 270), and by this Court (*Murray vs. Wilson Distilling Co.*, 213 U. S., 151), to the effect that the members of the Board of Directors of the State Dispensary were officers of the State and their contracts in purchasing supplies necessary in the operation of the State Dispensary were contracts of the State, and that parties so contracting with them were mere creditors of the State; that they

had no lien upon nor vested interest in any of the proceeds of sale, or any vested lien or trust whatever upon the moneys held by the State Dispensary, and that the statute creating the Commission to provide for examination and liquidation of claims against the State and to pay such claims out of the assets in their hands when liquidated, was a mere ordinary act of legislation providing how claims against the State may be proven.

Nor, it is submitted, can the power be doubted of the Legislature of the State to prescribe how claims against the State shall be presented, proven and paid, and the mode of such procedure be fixed by it. Nor does the amendatory Act alter in any way the questions heretofore settled in the case of *Murray vs. Wilson Distilling Co.*, *supra*.

In view of this construction of the statutes and of the course of procedure by the Commission in the hearing and upon the presentation by the plaintiff in error, it is submitted that the plaintiff in error had not only every opportunity to make proof of its claim, but to meet the witnesses for the State before the Commission, to cross-examine them, to make reply in testimony, and to argue the case by its counsel.

(1) It is therefore submitted that the first assignment of error, which is made to the mode of procedure of the State Dispensary Commission in determining its claim and offsetting the same when duly allowed and approved by said Commission by a supposed claim of the State of South Carolina, on account of previous and other distinct and separate transactions between the claimant and the State, which was in violation of Section 1 of the Fourteenth Amendment, and Section 10 of Article I of the Constitution of the United States, and deprived the claimant of its property without due process of law and denied to it the equal protection of the law and trial by jury, is without any support whatever, and raises no material Federal question which has not already been decided and settled by this Court.

The assignment that it impaired the obligation of claimant's contract out of which the claim arose, it is submitted, is without any merit, for there was no legal obligation of the State which could be enforced against it, and only its moral obligation to pay a just claim and liability. Hence, there could be no legal and

enforceable obligation that could be impaired by the State in fixing and providing its own methods whereby it would pay its debts, and such contract was made in the light of the Constitution and the provisions of law as they stood when such contract was made.

(2) The second assignment of error is to the effect that the claimant had no notice in any way of any such claim or claims against claimant in favor of the State, by pleading or otherwise, and no opportunity to be heard thereon, and therefore the Supreme Court of the State erred in holding that it was not deprived of its property without due process of law and denied the equal protection of the law and its contract right impaired, in contravention of the Fourteenth Amendment and Article I, Section 10, of the Constitution of the United States.

The transcript fully shows that they not only had notice of the claim made by the State against it, but that they were advised from the beginning and throughout the entire proceedings that the State was insisting that they had no just liability against it, by reason of the illegal and fraudulent combination and agreement made between the operating officers of plaintiff in error and the members of the Board of Directors of the State Dispensary to make the State of South Carolina pay a larger sum than it would have otherwise done, and they were given full opportunity to reply thereto. See the opinion of the State Supreme Court, Tr. ff. 40-41, pp. 23-24.

(3) The third assignment is to the effect that the Supreme Court of the State should have held and decided that the action of the State Dispensary Commission in offsetting and denying the claimant's claim was in violation of Section 1 of the Fourteenth Amendment, and Section 10 of Article I of the Constitution of the United States, because the statute pursuant to which said claim was filed gave the Commission no jurisdiction to pass upon or determine claims of the State against claimant, because claimant had no notice of any such claim by pleading or otherwise, and no opportunity to be heard or present evidence or argument thereon, and was denied the right of trial by jury.

We have already noticed that the statutes creating the Commission expressly not only gave them the power, but imposed upon them the duty, in ascertaining what the just liabilities of the State were with regard to the claims presented, to make investigation into the past conduct of the officers of the State Dispensary as to the creation of these debts.

Section 8 of the Act is:

"Section 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission."

This section is commented upon in the opinion of this Court in *Murray vs. Wilson Distilling Co.*, *supra*. There could be no other purpose in conferring this power and imposing this duty than to ascertain how the parties presenting these claims against the State had conducted themselves with respect to the Board of Directors, whose acts were under investigation.

We have already called attention to the fact that the claimant had notice of such claim of the State in the progress of the case, had submitted testimony with regard thereto, had cross-examined the witnesses for the plaintiff, and had every opportunity to discuss the same before the Commission.

(4) This assignment of error, which alleges that the Supreme Court of the State should have held that the claimant was deprived of its contract rights and property without due process of law and denied the equal protection of the law by the action of the Commission in receiving and considering evidence, over claimant's objection, concerning other claims of the State arising

out of other distinct and separate dealings between claimant and the State, as setoffs to deny the claimant's claim, when claimant had no notice or opportunity to be heard on such other claims, we submit is fully answered by the opinion of the Court itself.

Respectfully submitted,

THOMAS H. PEEPLES,
BENJAMIN LINDSEY ABNEY,
Attorneys for State of South Carolina.

October 29, 1914.

APPENDIX.

CONSTITUTIONAL PROVISIONS.

Article VIII, Section 11, Constitution 1895.

"In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, county and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same."

Article XI, Section 12, Constitution 1895.

"All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however*, That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of

alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided."

STATUTES.

(XXV Stats., 835.)

AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY
CONNECTED WITH THE STATE DISPENSARY, AND TO WIND
UP ITS AFFAIRS.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well-known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of \$10,000.

SEC. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

SEC. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased; and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for

the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further,* That all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

SEC. 4. The compensation of each member of said Commission shall be \$5 per day for each day actually employed about the business, and actual expenses for the time engaged: *Provided,* That they shall receive no compensation for services rendered on this Commission after January 1, 1908.

SEC. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

SEC. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

SEC. 7. The said Commission shall submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of their actings and doings.

SEC. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved 24 January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided,* That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, A. D. 1907.

(XXV Stats., 1289.)

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF ALL PROPERTY CONNECTED WITH THE STATE DISPENSARY AND TO WIND UP ITS AFFAIRS," SO AS TO PROVIDE COMPENSATION FOR MEMBERS OF THE SAID COMMISSION FOR THE YEAR 1908, AND TO PROVIDE FOR THE SALE OF THE REAL ESTATE HERETOFORE USED IN CONDUCTING THE DISPENSARY, AND TO FURTHER PROVIDE FOR WINDING UP THE AFFAIRS OF THE STATE DISPENSARY.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs," approved the 16th day of February, 1907, be, and the same is hereby, amended by striking out the figure 8 at the end of Section 4, and inserting in lieu thereof the figure 9, and by adding at the end of said section the following: "That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars:" *Provided, further,* That the per diem provided for herein shall begin on the date of the approval of this Act.

SEC. 2. That said Act be further amended by adding at the end thereof the following, as Section 9: "Section 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, the typewriters, adding machines, files, metal, and other furniture in the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided,* That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same: *Provided, further,* That the

typewriters, adding machines, files, metal, and other furniture may be transferred by the Commissioners of the Sinking Fund to any of the State offices that, in the judgment of the Commissioners, may need them."

SEC. 3. That said Act be further amended by adding the following as Section 10: "Section 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary."

SEC. 4. That said Act be further amended by adding the following as Section 11: "Section 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary, and to pay for the State any and all just claims, which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have been, or may hereafter be, collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court," so that said Act, when so amended, shall read as follows:

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That immediately upon the approval of this Act the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of \$10,000.00.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, That no alcoholic liquors or beers shall be disposed of within this State, except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: *Provided, further*, That all payments shall be made in gold and silver coin of the United States currency or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be five (\$5.00) dollars per day for each day actually employed about the business and actual expenses for the time engaged: *Provided*, That they shall receive no compensation for services rendered on this Commission after January 1, 1909: *Provided, further*, That in addition to the compensation herein provided for, each member of said Commission shall be allowed the sum of one hundred and fifty (\$150.00) dollars: *Provided, further*, That the per diem provided for herein shall begin on the date of the approval of this Act.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants, and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a report in full of all their actings and doings.

Sec. 8. The said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D. 1906, be, and hereby is, conferred upon the Commission provided for under this Act: *Provided*, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Sec. 9. That the Commissioners of the Sinking Fund be, and they are hereby, authorized and required, upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the city of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of Section 91, Code of Laws of South Carolina, Vol. I, 1902: *Provided*, That the said property shall not be sold for less than seventy-five thousand (\$75,000.00) dollars, and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Sec. 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland county against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by

them and used by the State, together with the costs and expenses of defending the said suit, be paid by the Dispensary Commission out of the assets now in their hands belonging to the State and arising from the assets of the Dispensary.

Sec. 11. That said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State any and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary which have or may hereafter be collected by said State Dispensary Commission: *Provided*, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law: *Provided, further*, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Sec. 12. That no funds arising from the sale of the assets of the former State Dispensary, or from the collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission shall be paid out for any purpose or to any person whatsoever, except upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same, together with a certificate of said Commission or a majority thereof, which certificate shall show: that the said check is issued in payment of some expense provided for by statute, or necessarily incident to closing up the affairs of the Dispensary, or for services rendered said Commission in closing up the affairs of said Dispensary, or contracted for in accordance with law by said State Dispensary Commission, or that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due, and upon such adjudication ordered paid.

In the Senate-House the 21st day of February, in the year of our Lord one thousand nine hundred and eight.

THOS. G. McLEOD,
President of the Senate.

RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 24th day of February, A. D. 1908.

M. F. ANSEL,

Governor.